CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10508 of 2015-DB

[Arising out of Order-in-Original/Appeal No KCH-EXCUS-000-APP-007-14-15 dated 06.01.2015 passed by Commissioner of Central Excise-RAJKOT]

Commissioner of Central Excise & ST, Rajkot .... Appellant
Central Excise Bhavan,
Race Course Ring Road, Income Tax Office,
Rajkot, Gujarat -360001

VERSUS

Welspun India Limited .... Respondent
Welspun City, Village : Varsamedi,
Taluka : Anjar, KUTCH, GUJARAT

APPEARANCE :

Shri Mihir G Rayka, Addl. Commissioner (AR) for the Appellant -Revenue
Shri Hardik Modh, Advocate for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 14.02.2024

FINAL ORDER NO. 11279/2024

RAMESH NAIR :

In this appeal the Bench has raised a preliminary query that whether the Revenue's appeal involving less than the threshold limit of Rs. 50 Lakh and due to which the appeal of the Revenue is liable to be dismissed on Government litigation policy instruction vide F. No. 390/Misc/116/2017-JC dated 22.08.2019, as amended. The learned AR on the earlier occasion on 01.12.2023 raised objection that the appeal involved an amount of Rs. 7.97 Crores and not 1.07 Lakh. In order to get the correct position, this Tribunal passed order dated 01.12.2023 which is reproduced below:-

> "The issue involved in the present case is that what amount is involved in the present Department's appeal, there is a dispute between the revenue and the Respondent. Revenue's contention is that it involves 7.97 crores, whereas the respondent's claim is that the issue involved in the present appeal is only refund of education cess to the extent of Rs.1,07,487/-. In this regard, the Respondent has made a statement vide written submission and also produced copy of the appeal filed before the Commissioner (Appeal). According to which the appeal is for limited education cess of Rs. 1,07,487/-. In the interest of natural justice. We are of the view that, the concerned respondent

Commissioner should file his comments on the submission made by Respondent that whether this appeal involves an amount of Rs. 7.97 crores or Rs. 1.07 lakhs. The comments may be submitted within one month. List on 17.01.2024."

2. In compliance to the above order, learned AR submitted a letter given by concerned respondent Commissionerate which is scanned below:-

I/1777962/2024

कार्यालय, आयुक्त केंद्रीय कर,कच्छ, गाँधीधाम
Office of the Commissioner of Central Tax, Kutch Gandhidham
प्लॉटसं°८२ ,सेक्टर -८ ,रामलीला मैदान के सामने ,गाँधीधाम - ३७०२०१
Plot No. 82, Sec – 8, Opp. RamleelaMaidan, Gandhidham 370201
Phone: 02836-256754 Fax: 02836-256770/92/42
Email- legal-cgstkutch@gov.in

Date : 09.01.2024

To
The Deputy/ Assistant Commissioner (AR),
CESTAT, Ahmedabad.
Sir,

Subject: Clarification regarding the amount involved in the appeal no.
E/ 10508/2015 filed by the Department against OIA No. KCH-EXCUS-000-APP-007-14-15 dtd. 06-01-2015 - m/r.

Please refer to your letter F.No. E/10508/2015 dtd. 01-12-2023 seeking clarifications in the case of appeal no. E/10508/2015 filed by the department against OIA NO. KCH-EXCUS-000-APP-007-14-15 dtd. 06-01-2015.

2. In this connection clarifications regarding the information sought for in the aforesaid letter are as under:

i. As to what is the amount involved in the Departmental Appeal No. E/10508/2015?

Clarification: the appeal amount may be reported as Rs.7,97,12,689/-, since, the prayer of appeal seeks setting aside the OIA which has allowed the appeal of the taxpayer, wherein, the rejection of refund in excess of Rs.23,88,62,220/- has been termed as incorrect.

ii. Whether the Departmental appeal no. E/10508/2015 would be covered under the monetary limit prescribed by CBIC for filing appeals in CESTAT or not? if not why?

Clarification: In view of the clarification to query (i), the appeal having been filed by the Department would not be covered under the monetary limit prescribed by CBIC for filing appeals in CESTAT.

3. This issues with the approval of the Commissioner, CGST Kutch(Gandhidham).

Yours faithfully,

HANDED OVER BY ADVOCATE/AR ON
14 FEB 2024

From the above letter dated 09.01.2024 Revenue has informed that he amount involved is Rs. 7,97,12,689/-. However, after hearing both sides we find that the present appeal has arisen out of impugned order-in-appeal No.

KCH-EXCUS-000-APP-007-14-15 dated 06.01.2015 whereby the assessee's appeal was allowed. The said order-in-appeal was passed in the assessee's appeal against order-in-original No. 01/20/Re-Credit/2013-14 dated 28.03.2014. On perusal of said order-in-original, it is found that the Adjudicating Authority allowed the refund for Rs. 23,88,62,220/- out of Rs. 31,85,74,909/- and the amount which was not allowed includes an amount of Rs. 1,07,487/- representing the education cess and higher education cess. For this amount, the assessee filed appeal before Commissioner (Appeals) which was disposed of by the impugned order dated 06.01.2015 and for the remaining amount the matter was separately taken up to the Tribunal and the Tribunal vide order dated 02.01.2019 decided the matter in favour of the assessee against which the department appeal is pending before Hon'ble Supreme Court. Therefore, the only amount remaining was Rs. 1,07,487/- for which the appeal was allowed by the Commissioner (Appeals) by impugned order. Hence, against the said order, appeal filed by the Revenue being for Rs. 1,07,487/- only and the same is much below the threshold limit of Rs. 50 Lakh. Accordingly, the same is not maintainable in the light of Government Litigation policy vide F. No. 390/Misc/116/2017-JC dated 22.08.2019, as amended hence the Revenue's appeal is dismissed.

(Operative part of the order pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL