CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH, COURT NO. 3

CUSTOMS APPEAL NO. 10033 OF 2021

[Arising out of OIO-MUN-CUSTM-000-COM-02-20-21 dated 27/08/2020 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA]

COMMISSIONER OF CUSTOM-MUNDRA **Appellant**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra, Kutch,
Gujarat-370421

Vs.

SHRI NITIN VIRKAR **Respondent**
Associate General Manager, And Authorised
Signatory of M/S. RSIL, 283, Manavtanagar
Indore,
Madhya Pradesh

WITH

CUSTOMS APPEAL NO. 10198 OF 2021

[Arising out of OIO-MUN-CUSTM-000-COM-02-20-21 dated 27/08/2020 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA]

COMMISSIONER OF CUSTOM-MUNDRA **Appellant**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra, Kutch,
Gujarat-370421

Vs.

RUCHI SOYA INDUSTRIES LIMITED **Respondent**
301, Mahakosh House, 7/5, South Tukoganj,
Nathmandir Road,
Indore, Madhya Pradesh

Appearance:
Shri Girish Nair, Assistant Commissioner (AR) for the Appellant
Shri Dhaval Shah, Advocate for the Respondent

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

FINAL ORDER NO. 12257-12258/2024

Date of Hearing : 12.08.2024
Date of Decision : 12.08.2024

RAMESH NAIR

Learned AR pointed out that resolution process has been approved by NCLT in the case of appellant. Consequently, the present appeal becomes infructuous in view of the decision of Hon'ble Apex Court in the case of Ruchi Soya Industries Limited in Final order no. 11272-11276/2022.

2. The appeal is dismissed as infructuous.

(Dictated and pronounced in the open Court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Dharmi

"The applicant filed the present miscellaneous application in view of the NCLT order dated 24.07.2019. 02. Shri Rajesh Rawal and Shri Dhaval Shah, Advocates appeared on behalf of the applicant. Shri Dhaval Shah submits that as per the resolution plan approved by NCLT, no dues exists against the applicant therefore, the demand involved in the impugned order is not recoverable by the department consequently, the appeal becomes infructuous. 03. On the other hand Shri G. Kirupanandan, learned Superintendent (AR) appearing on behalf of the revenue submits that on the direction of this Hon'ble Tribunal jurisdictional CGST office was asked as to whether any claim was filed before the resolution professional in the present appeals. He vide letter dated 08.08.2022 submitted that in respect of appeal No.C/11093/2018, ST/10366/2020 & ST/10623/2018, the CGST Office has filed claim before interim resolution professional under Regulation 20 of IBC, 2016. Subsequently, when no response was received from IPR, an appeal was filed under Section 42 of IBC, 2016 before the NCLT-Mumbai vide letter dated 02.09.2020. He has also submitted copy of letter dated 04.08.2022 along with enclosures received from CGST, Kutch-Gandhidham. 04. We have carefully considered the submissions made by both the sides and perused the records. We find that the NCLT has passed an order by approving resolution plan of the company M/s. Ruchi Soya Industries Ltd in favor of Patanjali Ayurved Limited, Divya Yog Mandir Trust, Patanjali Parivahan Pvt. Ltd. and Patanjali Gramudhyog Nyas, who are the resolution applicant. The relevant terms of the resolution plan are reproduced below:-

> *"It is to be clarified that no party has any right to dictate the terms of order. There is no need to substitute Para 38 with the proposed para as mentioned in the application. However, it is to be made clear that while approving the resolution plan, we have dealt with every aspect of the resolution plan in details and all the claims which have been admitted during CIRP are being deal with by us in terms of the resolution plan. Anyone who has not filed its claim then he will not have any right to agitate the same after the approval of the resolution plan."*

From the above terms of the resolution plan approved by the NCLT, it prima facie appears that the appellant is not liable to pay any dues. However, this tribunal is not competent to decide regarding the recovery of any dues. It is the department who has to decide whether any dues is recoverable or otherwise, in the light of the resolution plan approved by the NCLT.

4.1 We also find that on record and submission of the learned AR, it is on record that the revenue has filed an appeal under Section 42 of IBC, 2016 before NCLT- Mumbai vide letter dated 02.09.2020 however, there is no material on record to know that whether there is any outcome of the said appeal.

4.2 From the above facts, we find that as per the resolution plan approved by the NCLT and in the light of Hon'ble Supreme Court judgment in the case of Ghanashyam Mishra & Sons Pvt. Ltd.-2021 SCC Online SC 313, it prima facie appears that the adjudged dues cannot be recovered by the department however, this issue has to be decided by the department and not by this tribunal. For this reason, that firstly, there is no provision made in the Customs and Central Excise Act to give effect of NCLT proceedings. This tribunal being creature under the Customs Act, even though the Insolvency and Bankruptcy Code have over riding effect over all the other acts, in absence of any explicit provision under the Customs/Central Excise Act, this tribunal cannot decide finally whether the adjudged amount can be recovered by the department or otherwise. This issue has to be resolved by the respondent with the appellant/resolution applicant/NCLT/Resolution professional.

05. In this position, we are of the view that at present the appeal became infructuous accordingly, we dismiss the appeal as infructuous. Both the sides have liberty, that in case of any amicable resolution is not arrived at between the appellant and respondent, to approach this tribunal to revive the present appeals and to decide on merit, if required. The appeal is disposed of as infructuous. MA also stands disposed of.

06. Having decided the appeal as above, we note that IBC proceedings are being initiated against many companies who are either appellant or respondent in the appeals pending before this tribunal. We observed that the revenue-department has no proper guideline as to what stand is to be taken in a case where the IBC proceedings is in progress before NCLT/NCLAT or at higher forum. The assessee against whom the IBC proceedings are initiated invariably approach this tribunal through miscellaneous application for disposing of the appeals in the light of the NCLT's orders. However, in the absence of any guideline by the CBIC, the departmental representative are unaware as to what stand is to be taken in such cases. Therefore, we are of the view that the Central Board of Indirect Taxes & Customs may consider issuing guideline/procedure for dealing with the case before this tribunal wherein, against the assesse's company IBC proceeding has been initiated. Copy of this order be sent to the Chairman-CBIC by speed post.

2. Accordingly, appeals are dismissed.

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Dharmi