Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10872 of 2013-DB
C/CO/12045/2013
(Arising out of OIA-01-02-XOMMR-A-CUS-KDL-2013 Dated-09/01/2013 passed Commissioner of CUSTOMS-KANDLA)

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

VERSUS

H & R Johnson India **........Respondent**
Windsor, 7th Floor,
Cst Road, Kalina, Santacruz (East),
MUMBAI, MAHARASHTRA

APPEARANCE:
Shri. G. Kirupanandan, Assistant Commissioner (AR) for the Appellant
Shri. Manish Jain, Advocate for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 10479 /2023

DATE OF HEARING: 06.03.2023
DATE OF DECISION:06.03.2023

Raju

This appeal has been filed by the revenue challenging the power of remand of Commissioner (Appeals).

2. Learned AR argued that the Commissioner (Appeals) had no power to remand the matters, after the amendment dated 11.05. 2001.

3. We notice that the Section 35A was amended on 11.05.2001 We also notice that the said issue has been examined by the Hon'ble High Court of Gujarat in the case of COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-I VS. MEDICO LABS reported in-2004 (173) ELT 117 (Guj.)

> *"13. Once, we accept the judgment of the Single Member of the Appellate Tribunal taking view against the department, then the Commissioner (Appeals) continues to have the power*

of remand even after the Section 35(A) (3) of the Central Excise Act, 1944 by Finance Act, 2001, then the first question does not remain to be decided as substantial question of law.

14. We must also state that even after amendment, which has come into force with effect from 11-5-2001, powers of remand by allowing the appeal of the Commissioner (Appeals) have not been taken away specifically. In that view of the matter, we are of the considered opinion that the appellate authority viz Commissioner (Appeals) was vested with the power while deciding the appeal as he deemed fit by confirming, modifying or annulling the decision or order appealed against him. In our considered opinion, order of remand necessarily annuls the decision, which is under appeal before the appellate authority. Therefore, we entirely agree with the view taken by the learned Single Member of the Tribunal that even after amendment of Section 35A or the Central Excise Act, the appellate authority has the power to set aside the decision, which is under appeal before it and it has power to remand the matter to the authority below for its fresh consideration."

4. We find that the Hon'ble High Court of Gujarat has opined contrary to the revenue's stand consequently, the appeal filed by the revenue is dismissed and Cross Objection is also disposed of.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI