

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70512 of 2022

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-117-2022-23 dated 26/07/2022 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

Commissioner of Central Excise &

CGST, Noida

(Division-5, E-5, Sector-I, Noida-201301)

.....Appellant

VERSUS

M/s Samsung India Electronic Pvt. Ltd.,

....Respondent

(B-1, Sector-81, Phase-II, Noida-201305)

APPEARANCE:

Shri Santosh Kumar, Authorised Representative for the Appellant-revenue

Shri Atul Gupta, Advocate &

Shri Prakhar Shukla, Advocate for the Respondent-assessee

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70076/2023

DATE OF HEARING : 22 August, 2023

DATE OF DECISION : 22 August, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-117-2022-23 dated 26/07/2022 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida. By the impugned order Commissioner (Appeals) has set aside the Order-in-Original No.02/Refund/AC/CGST/D-V/Noida/2021-22 dated 31.12.2021. Hence, revenue has filed this appeal.

1.2 The Tribunal has allowed the Early Hearing Application in the present matter vide Miscellaneous Order No.70019/2023 dated 22.08.2023.

2.1 Appellant had filed two refund claims asking rebate of Rs.1,53,261/- and Rs.3,60,63,022/- on 29.06.2009 and 02.06.2009 respectively in terms of notification no.11/2005-ST dated 19.04.2005 read with Section 93A of Finance Act, 1994 in respect of service tax and cess paid on all taxable services exported by them in terms of Rule 3 of Export of Services Rules, 2005. These refund claims were rejected by the adjudicating authority vide Order-in-Original No.116/R/N-III/2010 and 117/R/N-III/2010 both dated 30.04.2010 mainly on the ground that no submission of invoices as per rule 4A of Service Tax Rules, 1994 so as to establish export of Rule3 (iii) of Export of Service Rules, 2005.

2.2 Appellant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal No.303 & 304/ST/APPL/NOIDA/2010 dated 03.09.2010 made same observations and admissibility of rebate claim and pointed that refund claims could not be rejected without issuance of show cause notice and giving proper opportunity to the appellant. Therefore, Commissioner (Appeals) has remanded back to the claim for denovo proceedings to the Original Authority.

2.3 Department challenged the said Order-in-Appeal before this Tribunal and Tribunal vide Final Order No.70272/2017-SM(BR) dated 08.03.2017 & 71149/2017-CU(DB) dated 25/07/2017 dismissed the appeal of the department and directed Original Authority to pass the reasoned order as per directions given by the Commissioner (Appeals). In denovo proceedings, adjudicating authority vide Order-in-Original Nos.25-26-R/AC/N-V/2018-19 dated 30.05.2018 again rejected the rebate claims.

2.4 Aggrieved by the said order, appellant filed appeal before Commissioner (Appeals) who vide the common Order-in-Appeal no.NOI-EXCUS-001-APP-130 &131-2020-21 dated 02.06.2020 set aside the order passed by Assistant Commissioner and allowed the appeal filed by the appellant with consequential relief as per law. Revenue challenged this order of Commissioner (Appeals) before this Tribunal and Tribunal vide Final Order No.70001/2021 dated 11 January, 2021 dismissed both the Service Tax Appeal Nos.70466 & 70574 of 2020, filed by the revenue. Aggrieved by the order of Tribunal, Revenue filed appeal before Hon'ble Allahabad High Court wherein Hon'ble High Court vide dated

06.09.2021 has rejected the appeal of revenue as not maintainable in Central Excise Appeal No.10 of 2021 & Central Excise Appeal Defective No.2 of 2021. Further, No appeal has been preferred against these orders.

2.4 Instead of implementing the order, the Assistant Commissioner has issued show cause notice dated 18.08.2021 proposing to reject the rebate claims. After considering the submissions made by appellant he vide his order in original referred in para-1 above, again rejected the refund claims.

2.5 Aggrieved appellant filed appeal before Commissioner (Appeals) who vide the impugned Order-in-Appeal allowed the appeal of the appellant with consequential relief.

2.6 Aggrieved revenue has filed this appeal challenging the order of Commissioner (Appeals).

3.1 We have heard Shri Santosh Kumar learned Authorized Representative appearing for the revenue and Shri Atul Gupta learned Advocate appearing for the appellant.

4.1 We have considered the submissions alongwith the submissions made in the appeal and during the course of argument.

4.2 For allowing the appeal Commissioner (Appeals) has in his order observed as follows:-

11. I have carefully considered the contents of the impugned Order, grounds of appeal and oral as well as written submissions made by the appellant. I have also perused the case papers and the cross objections filed by the respondent department.

12. I find that the core of the issue involved in the instant case is that whether or not the services provided by the appellant qualify as 'Export of Services' or not so as to make them eligible for grant of rebate of Service tax paid on such services.

13. I find that the issue itself is no more res-integra as having been decided by the Hon'ble Tribunal on two separate occasions in the favour of the appellant. Hon'ble Tribunal vide Final Order No.50142-50143/2015-CU(DB) dated 08.01.2015 reported at 2016(42)S.T.R. 831(Tri. Del.) held that:

"After going through the arguments advanced by both the sides we find that the facts of this case are similar to the case of Blue Star Limited (vs. Commissioner-2014-TIOL-2257-CESTAT- MUM) WHEREIN THE FACTS OF THE SAID CASE ARE AS UNDER :-

.....
 24..... The clients of the respondent were foreign clients, paid the respondent for such services rendered, in foreign convertible currency. It is in that sense that the Tribunal holds that benefit of the services accrued to the foreign clients outside India. This is termed as 'export of services'. In these circumstances, the Tribunal takes a view that if services were rendered to such foreign clients located abroad, then, the act can be termed as 'Export of service'. Such an act does not invite a Service tax liability. The Tribunal relied upon the circulars issued vs. Commissioner and prior thereto the view taken by it in the case of KSH Intl. Pvt. Ltd. and B.A. Research India Ltd. The case of the present respondent was said to be covered by the orders in these two cases. To our mind once the Hon'ble Supreme Court has taken the view that Service tax a value added tax which in turn is destination based consumption tax in the sense that it taxes noncommercial activities and is not a charge on business, but on the consumer, then it is leviable only on services provided within the country. (Para 6)"

"As the facts of this case are similar to the case of Blue Star Limited, therefore, we have no hesitation to hold that in this case appellant had provided services of business support and maintenance and repair services to their client located outside India and performed in India on behalf of client located outside India. Therefore, it is the case of export of services." (para 8) "In these Circumstances, we hold that appellants are not liable to pay Service tax at all."(para 10)

14. The respondent department has gone in appeal against the above F.O. of CESTAT with the Hon'ble Supreme Court of India with Civil Appeal Diary No. 23114/2018. Although the appeal has been admitted, no stay has been granted.

15. Further, as far as admissibility of rebate claims is concerned, I find that in the de-novo proceedings the adjudicating authority vide two OIOS dated 31.05.2018 rejected claims in question by holding that the services being provided do not conform to the definition of 'Export of Services' and that the appellant has failed to provide the relevant invoices issued by them. The Commissioner (Appeals) vide his OIA No. 130 & 131 dated 02.06.2020 set aside the said two OIOs and allowed the appeals of the appellant with consequential relief. Appeals of the Department against the said OIAs were dismissed by the Hon'ble Tribunal vide Final Order No.70001/ 2021 by relying on earlier order of CESTAT, New Delhi passed in the case of Appellant itself to hold that the matter is no more res-integra as held in F.O. NO. ST/A/20142-50143/2015-CU (DB) dated 08.01.2015 and held that transactions qualify as export of service and does not attract levy of service tax. The orders of the Commissioner (Appeals) were held to be legal and proper.

16. Departmental appeal against the decision of the CESTAT, Allahabad was also dismissed by The Hon'ble High Court vide order dated 6.6.2021 holding that such appeal was non-maintainable as the dispute

involved determination of question having relation to rate of excise/service tax.

17. Now, instantly in the fourth round of litigation also the adjudicating authority has rejected the two refund claims holding that:-

"22.6 The OIA No.NOI-EXUS-001-APP-130 & 131-2020-21 dated 20.06.2020 passed by the Commissioner(Appeals), CGST, NOIDA in appeal filed by M/s Samsung India Electronics Ltd....against Order-in-Original Nos.25-R/AC/N-V/2018-19 and 20-R/AC/N-V/2018-19 both dated 30.05.2018..... is not legal and proper on the following grounds:-

(i) "It appears that the Commissioner (Appeals) has erred holding that in in this case the party had provided services of maintenance, repair, replacement of parts and also sale support services..... to their client M/s SEC, Korea located outside India and performed in India on behalf of the client located outside India, therefore, it is case of export of services."

"from a plain reading of Rule 6A of Service Tax Rules, 1994, it is clear that that services of..., rendered by the party to Indian buyers on behalf of foreign principal does not qualify as export service. As in terms of Rule 6A(1)(d) as provision of service was not made 'out-side' India."

Further, in Para5 on page 26 the adjudicating authority has held that :-

"The Commissioner(Appeals) has erred in holding that in this case the party has provided services of business support and maintenance & repair services.....

...an SLP has been filed in Hon'ble Supreme Court, which admitted by the Hon'ble Supreme Court and which is still pending. Since the matter has not attained finality, the order of the Commissioner (Appeals) does not appear to be proper and legal."

24. that the instant rebate claims under notification No, 11/2005-ST dated 19.04.2005 of Service tax paid on taxable services exported in terms of Rule 3 of the Export of Services Rules, 2005, therefore, it does not fall under first proviso of sub-section 1 of Section 86 as it covers only matters related to the grant of rebate of service tax on input services and rebate of duty paid on inputs used in providing such services exported in terms of Rule 3 of the Export of Services Rules, 2005."

18. On the basis of the above findings the adjudicating authority has rejected both the refund claims in question. However, I observe that contrary to the aforesaid findings of the adjudicating authority, Hon'ble CESTAT vide its Final Order Nos. ST/A/50142-50143/2015-CU(DB), dated 8-1-2015 [reported at 2016 (42) S.T.R. 831 (Tri. Del.)] has held that Appellant is not liable to pay service tax as both the services are squarely covered under 'export of services' has decided the matter and no stay order has been granted against the same and as such the ratio of judgment still holds good.

19. Subsequently, in the later litigation proceedings also the Commissioner (Appeals) vide his OIA No. 130 & 131 dated 02.06.2020

had set aside the two OIOs rejecting the refund claims and allowed the appeals of the appellant with consequential relief which were also upheld by the Hon'ble Tribunal vide Final Order No.70001/ 2021. The CESTAT relied on earlier order of CESTAT, New Delhi passed in the case of Appellant itself to hold that the matter is no more res-integra as held in F.O. NO. ST/A/20142-50143/2015-CU (DB) dated 08.01.2015 and held that transactions qualify as export of service and does not attract levy of service tax. It was also held that there is nothing on record that the above said order of Tribunal has been stayed or set aside by the Hon'ble Supreme Court or any High Court and, therefore, the ratio of CESTAT judgment holds good and the appeals of the revenue was rejected. The orders of the Commissioner (Appeals) were held to be legal and proper.

20. Juxtaposition to the above settled legal position I find that Mrs. Vinay Singh, Assistant Commissioner, C.G.S.T., Division-V, NOIDA the adjudicating authority has, instead of following the ratio of judgments of the Hon'ble Tribunal and granting refund as consequential relief; issued a fresh SCN to the appellant and has decided the matter holding that the Commissioner (Appeals) has erred in judgment. I find that the said Assistant Commissioner, being a authority below was duty bound to follow the orders of superior appellate judicial foras and should have processed the refund claims as per the directions. In contrast, the adjudicating authority has issued second SCN on the same issue which has already been decided, thereby offending the principle of res-judicata. An adjudicating authority cannot sit in judgment on the same issue which has already been settled. The adjudicating authority was required to follow the orders of superior judicial authorities and should have cemented them by following them. The department has issued a SCN which has already been decided in the adjudication proceedings by the Commissioner (Appeals) and the CESTAT with the clear cut direction to allow Refund. However, the adjudicating authority has again issued a SCN on the same matter. This cannot be allowed to happen. The adjudicating authority in utter disregard to judicial discipline and regards for the higher judicial foras, has even dared to criticize senior judicial foras and has even used strong phrases like 'Commissioner Appeals has erred in judgment. The acts of the Assistant Commissioner smack of disobedience and are contemptuous in nature. I also find that she has not applied her mind while passing the order and this is reflected in use of the word 'appears' in the finding portion of the order.

21. I would also like to put on record my strong exception to the utter disrespect and insolence shown by the adjudicating authority towards the orders of judicial hierarchy. The Commissioner (Appeals) and also the Hon'ble Tribunal has on two occasions decided the matter and has held that the services in question qualify as 'Export of Services'. However, instead of respecting and following the orders, the adjudicating authority has again rejected the two refund claims of the appellant. The matter was remanded back by the Commissioner (Appeals) to the adjudicating authority to sanction the two refund claims to the appellant. However, the appellant has failed to get justice in even the fourth round of

litigation. This is complete failure of line of command and, if allowed to prevail, may result in anarchy and rule of law & chain of command will be broken. The adjudicating authority has acted as extra-constitutional authority not bounded by any law or statute. The adjudicating authority acts as a quasi judicial authority, and is duty bound to follow the law of precedent and is duty bound to follow the binding effect of the orders passed by the higher authorities of superior jurisdiction.

22. In addition to above I also find it relevant to mention here that non sanctioning and grant of refund for a delayed period of time without any logical reasoning and force of law not only result in waste of human resources but also ultimately led to the grant of interest on such delayed refund. The CBIC has time and again emphasized on the revenue officers for speedy disposal of the refund applications with the dual motto of providing relief to the assessee at the earliest and also to avoid payment of unnecessary interest in case of delayed refund. I find that in the present case, adjudicating authority has failed badly on both the counts.

23. In view of the foregoing discussion and findings I conclude that the impugned order does not has any merit and is liable to be set aside."

4.3 Revenue has challenged this order stating the grounds which are more or less the same as they were stated while filing the appeal which has been dismissed by the Tribunal by order No.70001 of 2021 dated 11/01/2021.

4.4 Further, we find that the authorization filed along with the appeal has been signed only by the Principal Commissioner CGST, Central Excise and Service Tax, Noida and the signature of the second Commissioner who is said to be a part of the review committee also is not appearing on the authorization filed. This appeal can be dismissed for the reason of being filed with improper authorization. Relevant provisions of the Central Excise Act, 1944 which provide for the review of the order of Commissioner (Appeals) reads as follows:

"Section 35B. Appeals to the Appellate Tribunal. -

(1B) (i)The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of1963) may, 10[by order], constitute such Committees as may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner(Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (here after in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional 16[Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise]who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.

Explanation . - For the purposes of this sub-section , "jurisdictional Chief Commissioner " means the Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter."

4.5 The authorization letter issued by the said Principal Commissioner on behalf of the Committee undertaking the review of impugned order has in fact not stated a single ground on the basis of which they have concluded that the impugned order is not legal and proper but have directed filing of the appeal stating the same grounds which were there in the appeal No ST/70466/2020. This appeal has been dismissed by the Tribunal vide Final Order No 70001/2020 and 70002/2020 dated 11.01.2021. As per the provisions of the Section 35 B (2), the Committee of Commissioners which was acting as per this section was

required to examine the legality and propriety of the impugned order and direct the filing of appeal challenging the impugned order on the grounds for which they found that impugned order was not legal and proper. The grounds on which appeal has been directed to be filed are not even the grounds on which the Commissioner (Appeal) has by the impugned order allowed the appeal filed by the appellant. While allowing the appeal Commissioner (Appeal) has categorically noted that this is the fourth round of litigation. In our view the manner in which authorization to file this appeal has been issued is contrary to Litigation Policy of the Government which clearly notes that Government should be responsible litigant rather than compulsive litigant. The relevant excerpt from the litigation policy is reproduced below:

"National Litigation Policy, 2010

II. THE VISION/MISSION

1. The National Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle.

"EFFICIENT LITIGANT" MEANS

- *Focusing on the core issues involved in the litigation and addressing them squarely.*
- *Managing and conducting litigation in a cohesive, coordinated and time-bound manner.*
- *Ensuring that good cases are won and bad cases are not needlessly persevered with.*
- *A litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the*

facts that Government is not an ordinary litigant and that a litigation does not have to be won at any cost.

"RESPONSIBLE LITIGANT" MEANS

- *That litigation will not be resorted to for the sake of litigating.*
- *That false pleas and technical points will not be taken and shall be discouraged.*
- *Ensuring that the correct facts and all relevant documents will be placed before the court.*
- *That nothing will be suppressed from the court and there will be no attempt to mislead any court or Tribunal.*

2. Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the court decide," must be eschewed and condemned.

Status Note on National Litigation Policy

2. Repeatedly it is pointed out that the indifference of the Government compels people to come to courts in search of relief and thus Government enjoys the dubious distinction of being the largest litigants in the courts involving big draught on public exchequer. commenting on the absence of litigation policy on the part of the State, justice Krishna Iyer in Dilbagh Rai Vs UOI & Ors AIR 1974 SC 130 has observed as follows:

"The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant today and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect

finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negated in the judgment just pronounced."

Justice Iyer further stated, that "It is not right for a welfare State like ours to be Janus-faced and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. "

3. Again in the case of *State of Punjab V Geeta Iron & Brass Works Ltd (1978) 1 SCC 68*, Supreme Court made following observations regarding litigation policy of the Government:

*"We like to emphasize that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of Governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. **Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to."***

4. In respect of court case between one Departments of the Government with other or between one department of the Government and PSU, the Apex Court in case of *Chief Conservator*

of Forests v Collector (2003) 3 SCC 472, has made following observations:

"It was not contemplated by the framers of the Constitution or the C.P.C. that two departments of a State or the Union of India will fight a litigation in a court of law. It is neither appropriate nor permissible for two departments of a State or the Union of India to fight litigation in a court of law. Indeed, such a course cannot but be detrimental to the public interest as it also entails avoidable wastage of public money and time. Various departments of the Government are its limbs and, therefore, they must act in coordination and not in confrontation. Filing of a writ petition by one department against the other by invoking the extraordinary jurisdiction of the High Court is not only against the propriety and polity as it smacks of indiscipline but is also contrary to the basic concept of law which requires that for suing or being sued, there must be either a natural or a juristic person. The States/Union of India must evolve a mechanism to set at rest all inter-departmental controversies at the level of the Government and such matters should not be carried to a court of law for resolution of the controversy."

5. *In its 126th Report on "Government and Public Sector Undertaking Litigation Policies and Strategies", the Law Commission expressed the need of having a Litigation Policy to avoid litigation or reduce its cost which will bring down the load on the court system resulting in reduction of expenses on judicial set up.*

6. *The Ministry of Law and Justice, earlier held a "National consultation for strengthening the judiciary, towards reducing pendency and delays", on 24th and 25th October, 2009 on how best to tackle the problem of huge pendency in courts. The resolution presented by the then Minister of Law and Justice in the said consultation acknowledged the initiative undertaken by the Government of India to frame a National Litigation Policy (NLP) with a view to ensure conduct of responsible litigation by the*

Central Government and urges every State Government to evolve similar policies.

7. *To implement the said Resolution, Department of Legal Affairs, formulated National Litigation Policy in the year, 2010 and launched the same on 23rd June, 2010. **The National Litigation Policy, 2010 was based on the recognition that Government and its various agencies are the predominant litigants in courts and tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy was also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should not forget this basic principle.** However, the said policy of 2010 could not be implemented.*

8. *The said National Litigation Policy of 2010 and formulation of a National Litigation Policy, 2015 is under consideration of the Government with a view to bring down pendency and reduce the Government Litigation.”*

In view of the above aforesaid, we cannot comprehend any reason for which such an appeal could have been envisaged.

4.6 Further, We find that the entire proceedings initiated by the Assistant Commissioner vide show cause notice dated 18.08.2021 are in gross violation of the principles judicial discipline whereby instead of implementing the orders of higher judicial authorities he has initiated the proceeding on the same issue in other disregard of the judicial pronouncements. Hon'ble Supreme Court has in the case of M/s Kamalakshmi Finance Corporation 1991 (55) ELT 433 (SC) has observed as follows:-

"The respondent manufactures electrical insulation tapes. According to the respondent, the goods manufactured by it fall under Tariff Heading 85.47 of the Schedule to the Central Excise Tariff Act, 1985. On the other hand, according to the petitioner,

the goods fall under Heading 39.19 of the same Schedule. The Assistant Collector of Central Excise, therefore, gave notice to the respondent to show cause why the product should not be classified under Heading 39.19. The assessee, in reply, pointed out that, in respect of its factory at Borivili, its claim that the goods were classifiable under Heading 85.46 and that Heading 39.19 had no application had been accepted by the Collector of Appeals. The Assistant Collector, however, did not accept the assessee's contention. He distinguished the order in respect of the Borivili plant on the ground that, there, the assessee's claim was for classification under Heading 85.46 and not 85.47. He held, by his order dated 4-1-1988, that the products in question fell under Heading 39.19.

2. *The assessee preferred an appeal to the Collector (Appeals) who set aside the order of the Assistant Collector. He observed that reason given by the Assistant Collector for not following the order of the Collector of Central Excise (Appeals) on which the assessee had placed reliance before him was totally untenable. He set aside the order appealed against and directed the Assistant Collector to pass a reasoned and speaking order.*

3. *When the matter thus went back to the Assistant Collector he passed an order on 12-5-1989, reiterating the conclusion that had been reached by his predecessor. He also did not give any reasons as to why the order of the Collector (Appeals) in respect of the Borivili plant was not followed. Not only this, the assessee had placed before him a decision of the Central Excise and Gold Control Appellate Tribunal ('the Tribunal') in the case of M/s. Chetna Polycoats (P) Ltd., reported in [1988 \(37\) E.L.T. 253](#) to a similar effect. The Assistant Collector distinguished it observing that the said decision had not been agreed to by the Department which had filed an appeal to the Supreme Court therefrom. The second order passed by the Assistant Collector was practically a repetition of the earlier order.*

4. *The assessee thereupon filed a writ petition in the Bombay High Court. The High Court quashed the order of the Assistant Collector and directed the department to allocate the matter to a competent officer to pass a proper order [1990 (47) E.L.T. 231 (Bom.)]. The Union of India has preferred this appeal. The learned Additional Solicitor General, appearing for the Union, fairly concedes that so far as the merits are concerned, the department can have no grievance, since the High Court has only set aside the order of the Assistant Collector and remanded the matter back for a proper consideration and a proper order. We are, therefore, not called upon to enter into the merits of the classification in the present case except to observe that the decision of the Tribunal in the case of M/s. Chetna Polycoats Pvt. Ltd. was the subject-matter of Civil Appeal No. 2321 of 1989 preferred by the department which was dismissed at the stage of admission by this Court on 13th February, 1991 [1991 (53) E.L.T. A-28 (SC) - 1-5-1991].*

6. *Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the*

Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

7. *The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector*

or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.

8. *We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."*

4.7 Commissioner (Appeals) in the impugned order has not even gone into the issues raised in the Order-in-Original but have set aside the same by making an observation with regards to the violation of the principle of judicial discipline what prompts the committee of Commissioners/ Principle Commissioner, Customs, Noida to file an appeal against the order.

4.8 It is further noted that revenue has challenged the said order of Tribunal in Supreme Court which is with Civil Diary No.23114 of 2018

which has been admitted but not granted, rather than waiting for outcome of the Civil Appeal filed in the Hon'ble Supreme Court revenue by filing this appeal again acted to waste the judicial time of this Tribunal in most casual manner. Such an approach needs to be condemned, which we do so.

4.9 The case ideally deserves imposition of cost on the erring officers. However, in overall circumstances, we may not impose the same in the present case but would like to draw the concern to be more judicious while handling such matters involving huge revenue and rights of the party.

4.10 We direct that a copy of this order be forwarded to the Revenue Secretary and Chairman, Central Board of Indirect taxation so that they can take corrective measures by advising the Senior Officers who are responsible for guiding the junior officers in the matters of the appeals to be filed before the tribunal or any other forum.

5.1 Appeal filed by revenue is dismissed.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp