IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/2248/2011-EX[DB]

(Arising out of Order-in-Original No.03/Commissioner/Noida/2011-12 dated 27/07/2011 passed by Commissioner of Customs, Central Excise & Service Tax, Noida)

Commissioner of Central Excise, Noida **Appellant**

Vs.

M/s Kuwer Industries Ltd. **Respondent**

Appearance:

Shri Rajeev Ranjan (Joint Commr.) AR for Appellant
Shri Nishant Mishra (Advocate) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 25/01/2018
Date of Decision : 25/01/2018

FINAL ORDER NO. – 70931/2018

Per: Anil Choudhary

The two cross appeals were filed against Order-in-Original No. 03/Commissioner/Noida/2011-12 dated 27th July, 2011 passed by the Commissioner of Customs, Central Excise & Service Tax, Noida.

2. Before this Tribunal, the appeal filed by assessee was registered as Appeal No. E/2567/2011 and the Appeal filed by Revenue was registered as Appeal No.

E/2248/2011. The appeal filed by the assessee, No. E/2567/2011 was disposed of vide Final Order No. A/A/647/2012 against the assessee, on appellant – assessee failed to make pre-deposit as directed by this Tribunal. Being aggrieved, the appellant had preferred Writ Tax No.662/2012 before Hon'ble Allahabad High Court. By order dated 4th August, 2016. Hon'ble Allahabad High Court, following the ruling of Hon'ble Gujarat High Court in the case of Indsur Global Ltd. vs. UOI 2017 (310) E.L.T. 833 and Hon'ble Madras High Court in the case of Malladi Drugs and Pharmaceuticals Ltd. Vs Union of India reported at 2015 (323) E.L.T. 489 wherein Hon'ble High Court have pleased to declare the provisions of Rule 8(3A) of CER, 2002 as *ultra-vires* and violative of Article 14 of the Constitution. Consequentially the show cause notice was quashed. The impugned Order-in-Original as well as Stay Order passed by this Tribunal demanding pre-deposit from the assessee, were also quashed.

3. We are informed that against the order of Hon'ble High Court, Revenue has preferred appeal/SLP before Hon'ble Supreme Court. In this view of the matter, nothing survives in this appeal preferred by Revenue against the impugned order which already stand quashed

by Hon'ble High Court as noticed above. Accordingly, we disposed of this appeal as infructuous with liberty to the party to apply for restoration after disposal of Revenue appeal before Hon'ble Supreme Court.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Lks