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

APPEAL No. E/70189/2016-EX[SM]

(Arising out of Order-in-Original No. AGA-EXCUS-000-COM-0014-15-16 dated 20/11/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Agra)

Commissioner, Customs, Central Excise &

Service Tax, Agra **Appellant**

Vs.

M/s Vishesh Industries **Respondent**

Appearance:

Shri Mohd Altaf (Assistant Commissioner) AR for Appellant
Ms Stuti Saggi (Advocate) for Respondent

CORAM:

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

Date of Hearing : 04/01/2019
Date of Decision : 04/01/2019

FINAL ORDER NO **70009 / 2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Learned AR Shri Mohd Altaf, Assistant Commissioner for the Revenue and Learned Counsel Ms Stuti Saggi, Advocate for the Respondent I note that the issue in the present appeal is related to Application of Rule 8(3A) of Central Excise Rules, 2002. It was submitted that learned Commissioner has decided the matter in favour of respondent relying on the ruling by Hon'ble Gujarat High Court in the case of Indsur

Global Ltd. vs. Union of India reported at 2014 TIOL 2115-HC-AHM-CX and also at 2014 (310) ELT 833 (Gujarat). The Revenue has preferred the appeal against the said decision on the ground that the Hon'ble Supreme Court of India have admitted SLP (Civil) and, therefore, Revenue has pleaded that impugned order passed by learned Commissioner is not legal and proper. I note that the said issue in respect of Rule 8(3A) of Central Excise Rules, 2002 is no more *res integra* in view of the Final Order No. 72503-72508/2018 dated 28.09.2018 passed by this Tribunal. While passing the said final order this Tribunal have taken into consideration the fact of Hon'ble Supreme Court admitting SLP challenging the said ruling by Hon'ble Gujarat High Court in the case of Indsur Global Ltd. This Tribunal has also taken note of the fact that said ruling has been stayed by Hon'ble Supreme Court. For ready reference I reproduce the following part of the said Final Order dated 28.09.2018:-

"2. After hearing both the sides, we find that the issue is no more res integra. The Hon'ble Gujarat High Court in the case of M/s Indsur Global Ltd. vs. UOI 2014 (310) E.L.T. 833 (Guj.) has declared the provisions of Rule 8(3A) of Central Excise Rules, 2002 as unconstitutional. The said decision of the Hon'ble Gujarat High Court stands followed by the Tribunal in number of cases.

Subsequently the said decision of the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. stands considered and followed by the Hon'ble Madras High Court in the case of M/s A. R. Metallurgicals Pvt. Ltd. vs. CESTAT, Chennai 2015 (322) E.L.T. 49 (Mad.) as also by the Hon'ble Punjab & Haryana High Court in the case of Sandley Industries vs. UOI 2015 (326) E.L.T. 256 (P & H) and by the Hon'ble Allahabad High Court in the case of A.T.V. Projects India Ltd. vs. UOI 2016 (341) E.L.T.603 (All.)

3. It is noticed that though the issue has been held in favour of the assessee by the above referred decisions of various High Courts but Revenue has challenged the Hon'ble Gujarat and Madras High Court's decision by filing a Special Leave Petition against the said judgment before the Hon'ble Supreme Court. The SLP stands admitted by the Hon'ble Supreme Court alongwith grant of stay of proceedings. The Revenue's contention is that inasmuch as the said decision stand stayed by the Hon'ble Supreme Court, the same should not be followed and applied to the facts of the present case.

4. We note that Tribunal in the case of Principal Commissioner of Central Excise, Delhi vs. Space Telelink Ltd. 2017 (355) E.L.T. 189 (Del.) has taken note of the said development of staying the proceedings by the Hon'ble Supreme Court. However it stands observed that the said submission of the Revenue is fallacious because the Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association (1992) 3 SCC 1 has observed that an order keeping in *abeyance the judgment of a Lower Court or Authority does not deface the underlying basis of the judgment itself i.e. its reasoning. As such the Tribunal has followed the decisions of various High Courts.*

5. We also take note of this Bench decision in the case of Baba Vishwakarma Engineering Company Pvt. Ltd. in which case vide Final Order Nos.70429-70430/2017 dated 25/04/2017 as also in the case of Baba Vishwakarma Engineering Company Pvt. Ltd. vide Final Order No.70428/2017, the relief was granted to the assessee. Further vide Final Order No.70428/2017 dated 25/04/2017 passed in the same assessee's case. The Tribunal took note of the fact of the stay of Gujarat High Court's decision, by the Hon'ble Supreme Court in the case of M/s R.K. Machine Tools Ltd. vs. Commissioner of Central Excise, Ludhiana 2018 (1) TMI 39 CESTAT, Chandigarh. The entire development was taken note of and the Gujarat High Court decision was followed. The Tribunal in the case of Kalson Automotives Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Faridabad reported as 2017 SCC Online CESTAT 6865 took note of the latest decision of the Hon'ble Delhi High Court in the case of Space Telelink Ltd. in Central Excise Appeal No.05/2016 wherein vide its order dated 08/03/2017, and held as under:-

> *"6. I find that the Hon'ble Delhi High Court has observed that although the decision in the case Indsur Global Ltd. (supra) has been stayed by the Hon'ble Apex Court but the decision, unless until decided by the Hon'ble Apex Court, holds the field as on date and the Court is not persuaded to*

take a view different from those already taken. Therefore, the Hon'ble High Court holds that the impugned order and the reasoning of the CESTAT does not call for any interference as a view has already taken by Hon'ble Gujarat, Allahabad, Punjab & Haryana and Madras High Courts. In that circumstance, relying on the decision in the case of Space Telelink Ltd. (supra), I hold that proceedings against the appellants are not sustainable and the impugned order is set aside. Appeal is allowed with consequential relief to the appellant."

6. Inasmuch as the issue stands decided by various above referred decisions, we set aside the impugned orders holding against the appellants and allow the appeals with consequential relief to the appellants."

2. Inasmuch as issue stands decided by various above referred decisions I find no merit in the appeal filed by Revenue. I, therefore, reject the appeal filed by Revenue.

(Dictated and Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ankit