CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

Regional Bench COURT-2

Excise Appeal No.2084 of 2012

[Arising out of the Order-in-Appeal No.26/2012-CE dated 27.04.2012 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin-18.]

Commissioner of Central Excise
& Customs & Service Tax,
C.R. Building, Mananchira,
Calicut-673 001,
Kerala. **.......Appellant**

Versus

M/s. ITI Ltd.,
Kanjikode, Palakkad,
Kerala–678 623. **.......Respondent**

With

Excise Appeal No.2085 of 2012

[Arising out of the Order-in-Appeal No.25/2012-CE dated 27.04.2012 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Cochin-18.]

Commissioner of Central Excise
& Customs & Service Tax,
C.R. Building, Mananchira,
Calicut- 673 001,
Kerala. **.......Appellant**

Versus

M/s. ITI Ltd.,
Kanjikode, Palakkad,
Kerala – 678 623. **.......Respondent**

Appearance:
Mr. B.V. Kumar, Advocate Appeared for Appellant
Mr. K. Vishwanath, Authorized Representative for Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20692-20693 of 2024

Date of Hearing: 21.08.2024
Date of Decision: 21.08.2024

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding refund of excess duty, which was paid by the Appellant for the period 2000-2001. The Adjudication authority had rejected the refund claims on the ground that no material evidence has been produced towards non-passing of the burden of duty, except Chartered Accountant certificate. Aggrieved by the said orders, appeals were filed before the Commissioner (Appeals) and Commissioner (Appeals) allowed the appeals and remanded the matter to Adjudication authority. Aggrieved by the said order, present appeals are filed by the Revenue. Stay application filed along with the appeal was dismissed by the Tribunal as infructuous vide Stay order No. 1896-1898/2012 dated 24.12.2012.

2. When the Appeals came up for hearing, Learned Authorized Representative (AR) submits that subsequent to the remand order, Adjudication authority partially allowed the refund in 2012. Aggrieved by said order, appeals were filed by Revenue before the Commissioner (Appeals) and Commissioner (Appeals) allowed the appeal. Aggrieved by said order, another appeal No. E/20801/2017 was filed before this Tribunal and it is still pending.

3. Facts being so, a report was called and the Respondent vide letter dated 09.07.2024 submitted the following:-

भारतसरकार/ GOVERNMENT OF INDIA
वित्तमत्रांलय/ MINISTRY OF FINANCE
राजस्वविभाग/ DEPARTMENT OF REVENUE
आयुक्तकाकार्यालय/ OFFICE OF THE COMMISSIONER
केंद्रीयकरएवंकेंद्रीयउत्पादनशुल्क
CENTRAL TAX & CENTRAL EXCISE
कोषिक्कोडआयुक्तालय/ KOZHIKODE COMMISSIONERATE
केंद्रीयराजस्वभवन, मानांचिरा, कोषिक्कोड – 673001
C.R. BUILDINGS, MANANCHIRA, KOZHIKODE – 673001
E_mail: commr-cexcalicut@nic.in, ce46review.ker@nic.in

Phone: (0495) 2722508
Fax: 0495- 2727898
Phone–0495- 2727893

RECEIVED ADV/CA/AR
DATE:......21/8/24

GEXCOM/REV/MISC/182/2023-REV

Date: 9-7-2024

To

The Additional Commissioner (AR),
CESTAT, Bangalore.

Sir,

Sub: Central Excise Appeals No. E/2084/2012 & E/2085/2012 in the Case of ITI Ltd., Palakkad pending before Hon'ble CESTAT – Reg.

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Please refer to letter A.No.E/2084/2012 & 2085/ 2012 dated 21-6-2024 on the above subject.

2 It is ascertained that the Department complied with the Orders contained in the Order in Appeal Nos. 26/ 2012 CE and 25/ 2012 CE both dated 16-4-2012 and the Assistant Commissioner sanctioned refund and appropriated the refund amount of Rs.50,88,731/- and Rs.88,29,390/- vide OiO No.25/ 2012-CE(R) and 24/2012-CE(R) both dated 1-10-2012.

3 The Department had filed appeal before Commissioner (Appeals), Kochi against OiO No.25/2012 CE(R) dated 1-10-2012. Commissioner(Appeals), Kochi vide OiA No.CAL-EXCUS-000-APP-66-2017 dated 21-3-2017 (copy enclosed) allowed the appeal and the same was accepted by the Committee of Commissioners on 9-6-2017. Appeal was also filed against OiO No.24/ 2012 CE(R) dated 1-10-2012 and the same was decided by Commissioner(Appeals), Kochi vide OiA No.CAL-EXCUS-000-APP- 65-2017 dated 21-3-2017 (copy enclosed) allowing the appeal and the same was accepted by the Committee of Commissioners on 9-6-2017. There is no information regarding the assessee having filed any Appeal against these two Orders in Appeal.

Yours faithfully,

(S. VEERAMUTHU)
JOINT COMMISSIONER

Signed by Veeramuthu
Seperumal
Date: 09-07-2024 18:22:26

4. Heard both sides. on perusal of the documents, it is evident that against the impugned orders, there was no stay and as directed by Commissioner (Appeals), orders were passed. Facts being so, the present appeals become infructuous.

5. Considering the above, the Appeals are dismissed as infructuous.

(Dictated and pronounced in the open court)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Ganesh