CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 737 of 2012

(Arising out of Order-in-Appeal No. 516/2011 dated 05.01.2012 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

CST Bangalore
No. 16/1, S.P. Complex,
Lalbagh Road,
Bangalore – 560 027. ....**Appellant(s)**

Versus

Applied Materials India Pvt. Ltd.,
Unit No. 5, 3rd Floor,
Exporter Building,
International Tech Park,
Whitefield Road,
Bangalore – 560 066. ....**Respondent(s)**

APPEARANCE:

Mr. Neeraj Kumar, Superintendent for the Appellant.

Ms. Samruddhi Shetty and Mr. Siddharth Bavle, Advocate for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE SMT. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20985 /2025

DATE OF HEARING: 04.06.2025

DATE OF DECISION: 04.06.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is regarding the power of the Commissioner (Appeals) to remand the matter to Original Authority. Respondent herein is engaged in business of providing Information Technology Software Services (ITSS) and Business Auxiliary Services (BAS). On 29.06.2010, they have filed a refund claim, refund of unutilized cenvat credit for the period from July 2009 to September

2009 as per Rule 5 of Cenvat Credit Rule (CCR), 2004. After issuing the show-cause notice refund was partially allowed and aggrieved by said order the respondent filed before the Commissioner (Appeals). The Commissioner (Appeals) partially allowed the appeal and modified the Order-in-Original and remanded the matter to re-determine the refundable amount. Aggrieved by said order, the respondent herein had filed the appeal and this Tribunal as per the Final Order No. 21889/2014 dated 15.10.2014 allowed the appeal. In the meantime the department filed present appeal on the ground that as per the Section 85 of the Finance Act, 1994, the Commissioner (Appeals) has no power to remand the matter for Denovo Adjudication.

2. When the appeal came up for hearing, the learned Authorized Representative (AR) fairly admits that issue is no more res integra and as per the judgment in the matter of **A.S. Babu Sah Designs Vs. CCE (Appeals), Chennai-1 reported at 2020 (38) GSTL 161 (Mad.)** wherein the Hon'ble High Court of Madras held that the Commissioner (Appeals) can pass orders as he thinks fit which includes an order of remand. It further held that the amendment to Section 35A (3) of the Central Excise Act with effect from 11.05.2001 does not in any manner impact the power of the Commissioner Appeals while dealing with an order passed under Section 85 of the FA, 1994. Learned Authorized Representative (AR) reiterated the submissions and also relied on large number of decisions.

3. Heard both sides. The issue is no more res integra, since the issue is settled, the department appeal is dismissed.

(Operative portion of the order was pronounced in open court
on conclusion of hearing.)

(P.A.AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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