CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 536 Of 2010

[Arising out of OIA No. 241/Service Tax/DLH/2009 dated 20.11.2009 passed by the Commissioner (Appeals) of Central Excise, Delhi-II]

Ballarpur Industries Ltd. : Appellant (s)
SGU Yamuna Nagar 2, Ballarpur Industries
Ltd. First Floor, tower-C, FIP, MG Road, Gurgaon

Vs

CCE & ST, Panchkula : Respondent (s)
SCO No. 407-408, Sector 8, Panchkula

APPEARANCE:
Shri Mohinder Nain, Advocate for the Appellant
Shri Aneesh Dewan, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 60005/2024

Date of Hearing:05.01.2024

Date of Decision:05.01.2024

Per : S. S. GARG

The present appeal is directed against the impugned order dated 20.11.2009 whereby the Commissioner (Appeals) has rejected the refund of the appellant.

2. Briefly the facts of the present case are that the appellant filed refund of service tax amounting to Rs. 26,81,275/- paid on the services of Transport of Goods by Road for the period 16.11.1997 to 02.06.2008 and interest of Rs. 87,050/- before the Assistant Commissioner of Service Tax, Panchkula. The Assistant Commissioner after following the due process has rejected the refund of the appellant and thereafter, the appellant challenged the order of the
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Assistant Commissioner before the Commissioner (Appeals) who has also upheld the order of the Assistant Commissioner and thereafter, the appellant has filed the present appeal.

3. During the pendency of this appeal, the appellant-assessee faced financial difficulties and an application was filed by one of the financial creditors under section 7 of the Insolvency and Bankruptcy Code, 2016 for recovering debts due from the appellant-assessee company. The National Company Law Tribunal, (NCLT) Mumbai Bench initiated Corporate Insolvency Resolution Process (CIRP) against the appellant-assessee company vide its order dated 17.01.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016. Accordingly, a Resolution Plan was floated by the Resolution Professional for approval of the committee of creditors. The Resolution Plan submitted before NCLT Mumbai was approved by NCLT vide its order dated 31.03.2023 and the Resolution Plan became effective from this date i.e. 31.03.2023.

4. Ld. Counsel appearing for the appellant submits that in the Resolution Plan, there has not been any provision made with regard to the pendency of this case.

5. On the other hand, the Ld. Authorized Representative for the Revenue also accepted the fact that the Resolution Plan has been approved and in the Resolution Plan, nothing has been provided with regard to the present case.

6. After considering the submissions of both the parties and perusal of the Resolution Plan, we find that the identical matter has been considered by two coordinate benches of the Tribunal in the case of M/s Jet Airways (India) Limited vs. Commissioner of Service Tax-IV,

by Mumbai Bench vide order dated 12.05.2023 and Icomm Tele Ltd. vs. Commissioner of Central Tax, Puducherry-GST by Hyderabad Bench. It is pertinent to refer the findings of the CESTAT, Mumbai Bench in the case of M/s Jet Airways (India) Limited which was disposed of vide its order dated 12.05.2023 in Appeal Nos. ST/86949, 87287/2015 and it was ordered that the appeals stand abated once the Resolution Plan has been approved by NCLT and the CESTAT has become *functus officio* in the matters relating to this appeal. It is pertinent to reproduce the relevant findings of the coordinate benches on the issue which are reproduced herein below:-

"4. We also find that the matter is no more res integra, as the Hon'ble Supreme Court in Civil Appeal No. 8129 of 2019, in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd.& Ors. vide judgement dated 13.04.2021, had decided the settled position of law, as under:-

> *"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-*
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> *(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'I&B Code')?*
>
> *(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory / declaratory or substantive in nature?*
>
> *(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government,State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate*
>
> *Debtor, which are not a part of the Resolution Plan approved by theadjudicating authority?*
>
> *.....*

CONCLUSION

95. In the result, we answer the questions framed by us as under:

> *(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, allsuch claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*
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> *(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effectivefrom the date on which I&B Code has come into effect;*
>
> *(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."*

5. We also find that CBIC has vide Instruction No.1083/04/2022-CX9 dated 23.05.2022 has laid down the guidelines in the form of Standard Operating Procedure (SOP) for handling the NCLT cases by the department, and reiterated the legal position that as operational creditors, GST and Customs authorities are required to submit their claims against the corporate debtors when the corporate insolvency and resolution process has been initiated. Once the Resolution plan is approved by NCLT, no demands can be raised on the Resolution Applicant. The relevant paragraph of said instructions is extracted below:

"C.B.I. & C. Circular No. 1083/04/2022-CX.9
F. No. 296/286/2021-CX. 9

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New Delhi

Dated 23.05.2022

To All Principal Chief Commissioner(s)/ Chief Commissioner(s) of Customs/ Customs (Preventive)/ Customs & CGST, All Principal Chief Commissioner(s)/ Chief Commissioner(s) of CGST, Webmaster: cbic@icegate.gov.in

Madam/Sir,

Subject: Standard Operating Procedure (SOP) for NCLT cases in respectof the Insolvency and bankruptcy Code (IBC) – reg.

I am directed to inform the Insolvency and Bankruptcy Board of India has requested that role of GST and Customs authorities in certain key issues under the Insolvency and bankruptcy Code, 2016 needs to be formulated. Further, GST and Customs Authorities have been classified as operational creditors and are required to submit their claims against corporate debtors when the Corporate insolvency and resolution process is initiated and public announcement inviting claims is made by the insolvency professional.

2. A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on the Resolution Applicant who has taken over the company through such a resolution plan."

6. Appellant-assessee has also claimed that the refund of pre-deposit to be paid to them at the time of filing the captioned appeal. In this regard, we find that the matter has already been decided by the Hon'ble Supreme Court in the case of Ruchi Soya [2022 (380) ELT 8 (SC)]. The relevant paras of the judgement is extracted as follows:

"14. Admittedly, the claim in respect of the demand which is the subject matter of the present proceedings was not lodged by the respondent No. 2 after public announcements were issued under Sections 13 and 15 of the IBC. As such, on the date on which the Resolution Plan was approved by the Learned NCLT, all claims

> *stood frozen, and no claim, which is not a part of the Resolution Plan, would survive.*
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> *15. In that view of the matter, the appeals deserve to be allowed only on this ground. It is held that the claim of the respondent, which is not part of the Resolution Plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."*

7. However from the date of approval of the resolution plan by the NCLT, the appeal filed by the applicant has abated and CESTAT has become functus officio in the matters relating to this appeal.

8.1 *In view of the order passed by the Co-ordinate Bench of this Tribunal vide Final Order No. A/86026-86036/2022 dated 19.07.2022 and on the basis of the judgement of the Hon'ble Supreme Court in Ghanashyam Mishra (supra) and upon taking note of the fact that the NCLT has approved the resolution plan in the insolvency proceedings in regard to the corporate debtor of the appellant-assessee company, we are of the view that the appeals before this Tribunal are abated."*

7. By following the ratio of the above said decisions, we are of the considered view that once the Resolution Plan has been approved by the NCLT, thereafter, the present appeal stands abated as the CESTAT has become *functus officio* in the matter relating to the present appeal.

8. The appeal filed by the appellant is accordingly disposed of.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.