IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

E/107 to 109/2009

(Arising out of Order-in-Original No. 11/2008 dated 12.12.2008 passed by the Commissioner of Central Excise, Chennai – IV)

M/s. Dongsan Automotive India Pvt. Ltd.
Min Seok Kim
Hyeok Soo Son — Appellants

Vs.

Commissioner of Central Excise, Chennai – IV — Respondent

Appearance

Ms. J. Ragini, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **09.08.2017**

Final Order Nos. 41564-41566/2017

Per Bench

The issue posing for consideration in the above appeal is whether the demand raised for violation of Rule 8(3A) of Central Excise Rules, 2002 is sustainable or not.

2. The said issue was held in favour of the assessee in the case of Indsur Global Ltd. Vs. Union of India – 2014 (310) ELT 833 (Guj.) against which the department filed appeal before the Hon'ble Apex Court and the Hon'ble Supreme Court has stayed the operation of the said judgment as reported in 2016

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(335) ELT A109 (SC). The Hon'ble jurisdictional High Court in the case of Malladi Drugs & Pharmaceuticals Ltd. Vs. Union of India – 2015 (323) ELT 489 (Mad.) has also held the issue in favour of the assessee and the same is stayed by the Hon'ble Supreme Court as reported in 2016 (342) ELT A228 (SC).

3. This Tribunal vide Final Order No. 40104 to 40108/2017 dated 12.1.2017, on a similar issue, in the appellant's own case, has remanded the matter to the adjudicating authority so as to re-adjudicate the matter on the basis of the outcome of the Apex Court's decision in the above cases pending before the Hon'ble Supreme Court, after giving a fair opportunity of hearing to both sides.

4. Following the same, we remand the above cases to the adjudicating authority to re-adjudicate the matter after the outcome of the appeals pending before the Hon'ble Supreme Court and after giving a reasonable opportunity of hearing to both sides.

5. In the result, the impugned order is set aside and the appeals are allowed by way of remand to the adjudicating authority.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै/Chennai