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

Appeal No. E/341/2007

[Arising out of Order-in-Appeal No.28/2007 (M-I) dt. 26.03.2007 passed by the Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Central Excise,
Chennai-I
Appellant

Versus

Carborundum Universal Ltd.
Respondent

Appearance:

Shri K. Veerabhadra Reddy, JC (AR)
For the Appellant

Shri Akil Suresh, AC (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 : 09.05.2017

FINAL ORDER No. 40731/2017

Per Madhu Mohan Damodhar

Appellants herein were initially embroiled in a dispute with the department concerning classification of their products viz. fabrics processed with glue, starch, pigment claimed as falling

Customs, Excise & Service Tax Appellate Tribunal under TSH 5206 by the appellant and under TSH 5901 by the department. This matter was adjudged in favour of the respondent vide CESTAT's order as reported in 2007 (211) ELT 105 (Tri.-Chennai), which order was dismissed by the Hon'ble Supreme Court as reported in 2008 (223) ELT A94 (SC). Pursuant to this, a refund claim of Rs.10,00,000/- was preferred by the respondents, which had been earlier paid under protest by them. Original authority (refund sanctioning authority) vide order dt. 31.01.2006, on a conclusion that process of dyeing, printing had taken place with the aid of power, hence assessee was not eligible for exemption under Notification No.9/96 dt. 23.07.96, rejected the refund claim of Rs.10,00,000/-. On appeal, Commissioner (Appeals) vide the impugned order dt. 26.03.2007, placing reliance on the assessee's own case for an earlier period, wherein the issue at hand had been dismissed by the Hon'ble Apex Court order dt. 03.09.2001, set aside the order of original authority by way of remand with directions to the original authority to decide the case in view of the earlier order of Commissioner (Appeals) dt. 16.08.2014.

2. Aggrieved, department has filed appeal before this forum.

3. Today, when the matter came up for hearing, Ld. A.R Shri K. Veerabhadra Reddy, JC (A.R) reiterated the grounds of appeal.

Customs, Excise & Service Tax Appellate Tribunal

4. On the other hand, Ld. Advocate Shri Akil Suresh, on behalf of the appellant contends that the very same issue has been the matter of adjudication by Tribunal in the Final Order No.879-880/06 dt. 19.09.2006 of Tribunal, that the same had been decided in their favour and that appeals against the Tribunal order by department were dismissed by Hon'ble High Court of Madras as reported in 2009 (239) ELT 235 (Mad.).

5. Ld. A.R concedes this fact.

6. In view thereof, following the judicial discipline the matter stands covered, the appeal of the department is dismissed.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
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सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai