

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 50161 of 2021

(Arising out of Order-in-Appeal No. 05/CE/DLH/2020 dated 20.03.2020 passed by the Commissioner (Appeals), Central Tax, Central Goods and Service Tax, Central Excise, New Delhi)

With

Excise Cross Appeal No. 50153 of 2021

**Principal Commissioner of Central Tax,
GST North Commissionerate, New Delhi**Appellant
C.R. Building, I.P. Estate,
New Delhi

VERSUS

M/s. H.R. PaintsRespondent
16/8 Gali No.14, Main Burari Road,
Swaroop Nagar, Delhi- 110042

APPEARANCE:

Mr. Rakesh Agarwal, Authorized Representative of the Department
Mr. R.K. Philips and Mr. Apoorv Philips, Advocates for the Respondent

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

Date of Hearing/Decision: 06.07.2023

FINAL ORDER NO. 50872/2023

JUSTICE DILIP GUPTA

The sole issue on which the Department filed this appeal is that the Commissioner (Appeals) would have no power to remand the matter to the adjudicating authority after an amendment was made in section 35A of the Central Excise, 1944¹, on May 11, 2001.

1. the Excise Act

2. To appreciate this issue, it would be relevant to reproduce the provisions of section 35A of the Excise Act as it stood prior to May 11, 2001 and it is as follows:

"35A(3). The Commissioner (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary".

3. After May 11, 2001, the amended section 35A(3) reads as under:

"35A(3). The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against".

4. It is, therefore, clear that the power of remand conferred on the Commissioner (Appeals) while exercising powers under section 35A(1) of the Excise Act prior to May 11, 2001 has been withdrawn by the amendment made on May 11, 2001.

5. Learned authorized representative appearing for the Department is, therefore, justified in contending that the Commissioner (Appeals) committed an illegality in remanding the matter to the adjudicating authority.

6. Shri R.K. Philips, learned counsel for the respondent assisted by Shri Apoorv Philips, however, contended that if this be the position, the Commissioner (Appeals) himself should take a decision on the issue that has been remanded by him to the adjudicating authority.

7. The Commissioner (Appeals), while deciding the appeal, observed as follows:

"23. However, it is seen that based on its findings; the A has ordered confiscation goods collectively valued at Rs.59,20,984/- which are liable for confiscation under Rule 25 of the Central Excise Act, 2002. Rule 25 of the Central Excise Rules, 2002, stipulates that in case of violation of clauses (a) to (d) of the penalty not exceeding the duty on the excisable goods be imposed.

24. It is observed that the AA has in its order has imposed redemption fine of Rs.15,00,000/- and penalty of Rs.6,00,000/- on seized goods collectively valued at Rs. 59,20,984/- on the appellant. However, no duty in respect of the impugned offending goods has been calculated to arrive at the quantum of redemption fine / penalty imposable in the instant case. The appellant has opposed the quantum of redemption fine / penalty impose and has claimed the same to be excessive and to be not in consonance with rule 25 of CER, 2002 and various court judgment in the matter.

25. Since, in accordance with Rule 25 ibid the quantum of redemption fine / penalty should be in proportion to the duty imposable on the impugned offending goods, quantification of duty involved is necessary. Accordingly, I am inclined to remand the matter back to the Adjudicating Authority for quantification of duty involved on the seized goods and to determine redemption fine / penalty accordingly imposable in the matter."

8. As the Commissioner (Appeals) did not have the power to remand the matter to the adjudicating authority, we would request the Commissioner (Appeals) to decide the matter that was directed by him to be decided by the adjudicating authority.

9. The order dated March 20, 2020 passed by the Commissioner (Appeals) is, accordingly, modified and the appeal is allowed to the said extent. The Cross-Appeal is also disposed of accordingly.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**