CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH,COURT NO. I

Service Tax Appeal No. 52832 Of 2018

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-77-18-19 dated 16.05.2018 passed by the Commissioner (Appeals) GST, Customs & Central Excise, Bhopal (M.P.).]

South Eastern Coalfields Ltd Sohagpur Area — **Appellant**
Office of the General Manager,
Area Finance Manager, Post-Dhanpuri
Shahdol, Madhya Praesh-484114

vs

Commissioner, CGST Customs & Central Excise Jabalpur — **Respondent**
GST Bhawan, Napier Town,
Jabalpur, M.P.

APPEARANCE:
Mr. Rajeev Kumar Agarwal, Advocate for the Appellant
Mr. Rajeev Kapoor, Authorised Representative for the Department

CORAM :

HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/ Decision: November 16, 2023

FINAL ORDER NO. 51583/2023

<u>JUSTICE DILIP GUPTA</u>

This appeal seeks the quashing of the order dated 16.05.2018 passed by the Commissioner (Appeals) in the appeal that was filed by the department to assail the order dated 30.01.2018 passed by the Assistant Commissioner holding that the bar of unjust enrichment would not be applicable. The Commissioner (Appeals) has, however left it open the issue of unjust enrichment as the refund application filed by the appellant was found to be inadmissible on merits.

2. As the issue on merits was not required to be examined by the Commissioner (Appeals) since it had attained finality in the order dated 22.11.2016 passed by the Commissioner (Appeals) remanding the matter to the Assistant Commissioner to examine the refund claim after verification of documents and this order dated 22.11.2016 passed by the Commissioner (Appeals) has attained finality as it has not been challenged by any of the parties, the order dated 16.05.2018 passed by the Commissioner (Appeals), for reasons stated in order dated of date passed in Service Tax Appeal No. 52833 of 2018 (South Eastern Coalfields Ltd Sohagpur Area vs. Commissioner, CGST, Customs & Central Excise, Jabalpur), deserves to be set aside and is set aside.

3. The appeal is, accordingly, allowed.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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