CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 21311 of 2014
(Arising out of **Order-in-Original** No.VIZ-CUSTM-000-COM-014-13-14 dated 24.02.2014 passed by Principal Commissioner of Custom, Visakhapatnam)

Maheshwari Brothers .. **APPELLANT**
D.No. 5-16-9, Plot No. – 163,
NCS Road, Srinivasa Nagar,
Vizianagaram,
Andhra Pradesh – 535 001.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Service Tax
Visakhapatnam– CUS
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH
Customs Appeal No. 21312 of 2014
(Arising out of **Order-in-Original** No.VIZ-CUSTM-000-COM-015-13-14 dated 24.02.2014 passed by Principal Commissioner of Custom, Visakhapatnam)

Maheshwari Brothers .. **APPELLANT**
D.No. 5-16-9, Plot No. – 163,
NCS Road, Srinivasa Nagar,
Vizianagaram,
Andhra Pradesh – 535 001.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Service Tax
Visakhapatnam– CUS
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH
Customs Appeal No. 21313 of 2014
(Arising out of **Order-in-Original** No. 01/2014 dated 09.01.2014 passed by Commissioner of Central Excise, Custom & Service Tax, Guntur)

Jai Raj Ispat Ltd., .. **APPELLANT**
Plot No. 8, Phase No. III,
IDA, Jeedimetla,
Hyderabad – 500 055.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Central Excise & Service Tax
Guntur
P.B.Bo. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

AND

Customs Appeal No. 21314 of 2014

(Arising out of **Order-in-Original** No. 02/2014 dated 09.01.2014 passed by Commissioner of Central Excise, Custom & Service Tax, Guntur)

Jai Raj Ispat Ltd., .. **APPELLANT**
Plot No. 8, Phase No. III,
IDA, Jeedimetla,
Hyderabad – 500 055.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Central Excise & Service Tax
Guntur
P.B.Bo. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:

Shri Dr. C. Manickam, Advocate for the Appellant.
Shri A. Rangadham, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30043-30046/2023

Date of Hearing:10.04.2023
Date of Decision:10.04.2023

[ORDER PER: R. MURALIDHAR]

In these cases, the issue pertains to classification of imported coal. The Learned Counsel submits that the issue is covered by Larger Bench decision of the Tribunal in the case of Tamilnadu Generation & Distribution Corporation Ltd., Vs C.C. Tuticorin [2017 (348) ELT 585 TRI- LB].

2. He also relies on Final Orders of this Tribunal wherein several appeals pending before the Tribunal have been remanded to the Adjudicating Authority.

3. The Learned AR submits that in this case CESTAT, Bangalore had passed Misc Order No. 22821-22828/2014 dated 28.10.2014 wherein all the Appellants were directed to pre-deposit the confirmed demand in the Order-in-Original.

4. The Learned Counsel submits that against this Misc Orders directing deposit of pre-deposits, the Appellants filed Misc Applications before this Tribunal for Modification of the Order. This Tribunal vide M/30354-30357/2019 dated 06.08.2019 dismissed all the Misc Applications holding as under:

> 2.These miscellaneous applications were filed by the applicants for modification of Miscellaneous Order No. 22821-22828/2014, dated 28.10.2014 passed by the Tribunal. The application was filed with the cause title "MODIFICATION PETITION" . The law is well settled that the Tribunal is functus officio, once an order is passed by it and the said order can be modified under proper application. The modification in the order is subject to condition that there must be apparent mistake on the face of the record. However, on perusal of the present Modification Petition filed by the applicants, we do not find any apparent mistake in the Miscellaneous Order dated 28.10.2014 passed by the Tribunal.
>
> 3. In view of the above, we are of the considered opinion that the petition filed by the applicants cannot be considered for recalling the order dated 28.10.2014. Accordingly, the miscellaneous applications are dismissed.

5. On a query from the Bench as to whether any ROM Petition was filed against these Misc Orders M/30354-30357/2019 dated 06.08.2019, the Learned Counsel says that no further Misc Petitions were filed.

6. After going through the above factual matrix, we are required to decide as to whether non-compliance of pre-deposit by the Appellants would still makes the Tribunal to go into the merits of the case so as to decide whether these appeals can be remanded or not in terms of the Larger Bench decision. It is admitted fact that the Stay Order was passed on 29.10.2014 and the conditions specified therein were not complied with by the Appellant at any point of time till now. The matter had reached Supreme Court and Larger Bench had passed the order on 16.01.2017. From the records, it is seen that even when the Modification Application had come up for hearing on 06.08.2019 no reference whatsoever was made to the Larger Bench decision nor any pleading was made about some of the orders passed by this Tribunal on 26.09.2016 wherein Modification Applications were considered favourably. The Appellant had the opportunity to file Misc Petitions against the rejection of their Modification Applications which was not taken by them.

Therefore as on date the Stay Order passed by this Tribunal on 29.10.2014 and Misc Order passed on 06.08.2019 have reached finality.

7. At this juncture, the Tribunal has no power to review it own Stay Order and the Modification Orders passed on 06.08.2019, particularly in view of the fact that no further Misc Petitions were filed by the Appellants. Therefore, without going into the merits of the appeals, the Appeals are dismissed only on the sole ground of pre-deposit conditions not being met by the Appellants even after nearly 9 years of passing of Stay Order.

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

jaya