IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.75447/18

Arising out of O/A No.12/Kol-III/2017 dated 24.10.2017 passed by Commr. of CGST & Central Excise (Appeal-I), Kolkata

Commr. of CGST & Central Excise, Kolkata North Commissionerate

…APPELLANT(S)

VERSUS

M/s Bhaskar Industrial Development Ltd.

RESPONDENT (S)

APPEARANCE

Shri A.Roy, Supdt. (A.R.) for the Revenue
Shri A.Chakraborty & Shri Nilotpal Chowdhurym, Advocate for the Respondent (s)

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 11.05. 2018

ORDER NO.FO/76047/2018

Per Shri P. K. Choudhary :

This is an appeal filed by the Revenue against the Order-in-Appeal No.12/Kol-III/2017 dated 24.10.2017 passed by Commr. of CGST & Central Excise (Appeal-I), Kolkata.

2. The ld.A.R. appearing on behalf of the Revenue reiterated the grounds of appeal and submits that that the Commissioner (Appeals) should not have remanded the matter to the adjudicating authority.

3. The ld.Advocate appearing on behalf of the Respondent, submits that the matter may be remanded to the adjudicating authority for verification of the documents.

4. Heard both sides and perused the appeal records.

5. I find that Revenue is in appeal on the following grounds :

(i) Section 35(A) of the Central Excise Act, 1944/Section 128A (3) of the Customs Act, 1962 as it stood before 11.05.2001 read as "*Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary.*"

(ii) The above referred Section was amended with effect from 11.05.2001 and the new section read as *"Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against."*

(iii) The said amendment with effect from 11.05.2001 withdrew the powers of remand which was earlier vested with the Commissioner (Appeals). The said amendment was made in the Finance Act, 2001 by way of approval/assent given by the Parliament. Since then, the Commissioner (Appeals) has been authorized to act as an Adjudicating Authority and pass necessary orders if it is found that the original Adjudicating Authority has passed an order which is not legal and proper, by calling for the adjudication proceeding's record and re-examining the issue afresh/suomotu. The Commissioner (Appeals) has been given powers to issue orders alter ascertaining the facts at his end while in the earlier he could order the original Adjudicating Authority to adjudicate the matter in question afresh, by way of remand directions.

(iv) The Hon'ble Supreme Court of India in its judgment dated 01.07.2007 in Civil Appeal No.6988/2005 in the case of M/s MIL India Ltd. : 2007 (210) ELT 188 (SC) has noted the provisions of amended lay by observing that "in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the Notes to Clause 122 of the said Bill, it is stated that Clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (Appeals) to remand matter back to the adjudicating authority for fresh consideration."

Further, I find that the Commissioner (Appeals) has held that the assessee is eligible for benefit of exemption. Further, for the purpose of verification, he has remanded the matter to the adjudicating authority.

6. In view of the submissions advanced from both sides, I am of the considered view that the Commissioner (Appeals) should decide the matter afresh taking into account the points raised by the Revenue in their grounds of appeal. Accordingly, the matter is remitted back to the Commissioner (Appeals) of Central Excise to consider the grounds of appeal filed by the Revenue and to pass the order in accordance with law. Needless to mention that a reasonable opportunity of hearing be granted to the respondent. The appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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