

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Miscellaneous Application No.77263 of 2019

(On behalf of Appellant)

AND

Excise Appeal No.322 of 2009

(Arising out of Order-in-Original No.01/COMMR/ADJ/CE/DIB/09 dated 09.03.2009
passed by Commissioner of Central Excise, Dibrugarh.)

M/s. Kitply Industries Limited

(4th Floor, White House, 'A' Block,
119, Park Street, Kolkata-700016.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(Milan Nagar, Lane 'F', C.R.Building,
Dibrugarh-786003.)

WITH

Excise Appeal No.323 of 2009

(Arising out of Order-in-Original No.01/COMMR/ADJ/CE/DIB/09 dated 09.03.2009
passed by Commissioner of Central Excise, Dibrugarh.)

Shri P.K.Goenka,

M/s. Kitply Industries Limited

(4th Floor, White House, 'A' Block,
119, Park Street, Kolkata-700016.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(Milan Nagar, Lane 'F', C.R.Building,
Dibrugarh-786003.)

AND

Excise Appeal No.324 of 2009

(Arising out of Order-in-Original No.01/COMMR/ADJ/CE/DIB/09 dated 09.03.2009
passed by Commissioner of Central Excise, Dibrugarh.)

Shri Anil Banka, Director

M/s. Kitply Industries Limited

(4th Floor, White House, 'A' Block,
119, Park Street, Kolkata-700016.)

...Appellant*VERSUS***Commissioner of Central Excise, Dibrugarh****.....Respondent**(Milan Nagar, Lane 'F', C.R.Building,
Dibrugarh-786003.)**APPEARANCE**

Shri K.K.Banerjee, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the respondent (s)

**CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)****MISCELLANEOUS ORDER NO. 77797/2019****FINAL ORDER NO. 77015-77017/2019**

DATE OF HEARING : 25 November 2019

DATE OF DECISION : 25 November 2019

P.K.CHOUDHARY :

The above three appeals have been filed by the appellants thereby challenging the Order No.01/Commissioner/CE/DIB/09 dated 09.03.2009 passed by the Commissioner of Central Excise, Dibrugarh, whereby the Commissioner has confirmed the demands as raised against the appellants.

2. The appellant M/s.Kitply Industries Limited has also filed a Miscellaneous Application mentioning as under:-

- (a) It may be mentioned that the applicant/appellant company (Kitply Industries Limited) was sustaining financial losses for various unavoidable circumstances and hence, the applicant/appellant company, in view of the mandatory provisions of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) filed a reference application before the Hon'ble Board for Industrial and Financial Reconstruction (BIFR), which was registered as Case No.23 of 2012. Subsequently, such act was repealed vide Notification issued by Ministry of Finance, Government

of India. As a consequence of the same, in terms of the SICA Repeal Act, read with provisions of the Insolvency and Bankruptcy Code, 2016 (IBC), a time period of 180 days were provided to all companies whose reference stood abated to make a fresh reference to the concerned Hon'ble Company Law Tribunal (NCLT) ON 1st December, 2016.

- (b) That subsequently, Corporate Insolvency Resolution Process was commenced with effect from May 01, 2018 in the matter of M/s.Kitply Industries Limited i.e. the applicant/appellant company, vide order No.CP(1B) No.02/GB/2018 dated May 01, 2018, passed by the Hon'ble National Company Law Tribunal, Guwahati. In terms of the said order, in term of the provisions of Section 17 of the Insolvency and Bankruptcy Code 2016, one Mr.Bijay Murmuria was appointed as the interim Rresolution Professional (in short IPR) w.e.f. May 01, 2018. In the 1st Committee of Creditors meeting held on 8th June, 2018, it was agreed that IRP will continue as Resolution Professional (in short 'RP') in the said matter. It was also ordered that
- i. The management of the affairs of M/s.Kitply Industries Limited shall vest upon RP.
 - ii. The powers of the Board of Directors of Kitply Industries Limited shall stand suspended and the exercised by RP.
 - iii. The RP shall act and execute in the name and on behalf of M/s.Kitply Industries Limited, all deeds, receipts and other documents, if any.
- (c) That accordingly, on 7th December, 2018, the Hon'ble Mr. Justice P.K.Shaikia, Judicial Member of the Hon'ble National Company Law Tribunal, Guwahati, was, *inter alia*, pleased to pass the final order in connection with the said Corporate Insolvency Resolution Process, thereby approving the Final Resolution Plan was submitted by SREI Multiple Asset Investment Trust (Vision India Fund) in its totality and the Hon'ble Tribunal was further pleased to order that the approved Final Resolution Plan shall come into force with

- immediate effect. It was further ordered that all relevant parties in relation to the Final Resolution Plan will be bound by the terms and conditions mentioned therein in accordance with section 31(1) of the IBC, 2016.
- (d) That it is submitted that further, pursuant to the Order passed by the adjudicating authority, with respect to various litigations and ongoing investigations, proceedings, inquiries or adjudications of any nature whatsoever, against the Company pending before various forums all across India, shall be deemed to have been withdrawn.
- (e) Thus out of the total amount of rs.0.05 Crore proposed for the settlement of the entire litigations of all the Branches/Factories/Uits of the Corporate Debtor, the amounts allocated for CESTAT cases, Assam Branch is provided as below:

Show Cause Notice/Order No.	Proposed amount Total
01/Commr/ADJ/CE/DIB/09 dt.09.03.2009	7,306.00
CCE/Shillong/No.14/2001 dt.31.10.2001	5,483.00
CCE/Shillong/No.15/2001 dt.31.10.2001	32,122.00
CCE/Shillong/No.13/2001 dt.31.10.2001	30,924.00
Order-in-Appeal No.105/CE(A)/Ghy/07 dt.20.11.2007	4,164.00
DIB/11/1814-18 dt.29.02.2012	39,034.00

Thus in terms of the said Plan, approved by the Hon'ble NCLT Guwahati Bench, amount as stated above, as one time settlement payment of the ongoing litigations against Corporate Debtor, as stated above, has been paid. This fact has also been stated by our Company Secretary to the Assistant Commissioner, CGST & C.Ex. Tinsukia, by a letter dated 01.03.2019.

Thus from the above, it may be seen that all the dues of the applicant/appellant has been settled as one time settlement and paid in full.

3. In view of the above submissions, these three appeals listed before us today have become redundant.

4. Learned Authorized Representative appearing on behalf of the respondent department also agrees that the appeals are now rendered redundant.

5. As such, the appeals filed by the appellants are dismissed as infructuous. Miscellaneous Application filed by appellant M/s.Kitply Industries Limited also gets disposed of.

(Operative part of the order was pronounced in the open Court.)

SD/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

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

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