IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 78890 of 2018

(Arising out of Order-in-Appeal No. 36/CUS/CCP-GST/2018 dated: 31.07.2018 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneshwar.)

M/s. Balaji Industrial Engineering Pvt. Ltd.,
(Basti Road, Dist.- West Singhbhum, Barajamda – 833221, Jharkhand.)

...Appellant

VERSUS

Commr. (Appeals), GST, CX & Customs, Bhubaneswar
(Dhamra, P.O.- Dosinga, Dhadrak, Odisha – 756171.)

...Respondent

APPERANCE :
Mr. Aditya Dutta, Advocate for the Appellant
Mr. Sourav Chakraborty, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No...76767/2023

DATE OF HEARING :01.09.2023

DATE OF DECISION : 01.09.2023

PER: RAJEEV TANDON

Short question in the present appeal concerns the classification of the coal imported by the appellant. While the appellant has sought to classify the imported goods under Chapter heading 27011920 as Steam Coal (Non cooking) leviable to nil rate of duty, the department contends the classification of the said goods under 27011200 as Bituminous Coal, leviable to concessional rate of duty under Notification No. 12/2012-Cus dated 17.03.2012.

2. Regarding the classification of coal different benches of CESTAT had taken varied stance. The matter was subsequently referred to the Larger Bench. It has been brought to our notice that the issue involved is presently pending in appeal before the Hon'ble Apex Court in the case of **Maruti Ispat and Energy Pvt. Ltd.** and Others in Civil Appeal Dairy No. 28937/2014 and 9725/2014[1].

3. As the matter is subjudice before the Hon'ble Apex Court there is no point in holding on to the appeal before us. We note that in view of the aforestated conflicting position and the pendency of appeal before the Apex Court, the Larger Bench of the Tribunal, in the case of **Tamil Nadu Generation and Distribution Corporation Ltd. Vs. CC, Tuticorin[2]**, had granted liberty to the applicant/assesses to come again before Tribunal after having the final verdict from the Apex Court, within the prescribed time, if so advised. It had issued necessary directions in this regard for the disposal of the appeal, pending before the various benches, in accordance with the directions of the Larger Bench.

4. Following the said directions of the Larger Bench, we grant liberty to

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1. 2017 (351) ELT A 126 SC.

2. 2017 (348) ELT 585 (Tri.-LB).

the applicants/assesses to come again before the Tribunal after the final verdict of the Apex Court is pronounced, if so advised, within the prescribed timelines. Accordingly, matter stands remanded to the Adjudicating Authority.

5. The appeal is disposed off in the aforesaid terms.

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

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

K.M.