IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 75588 of 2015

(Arising out of Order-in-Appeal No.52/GHY/CE(A)/GHY/2015 dated 30.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Guwahati)

Commissioner of Central Excise & Service Tax, **: Appellant**
Sethi Trust Building, G.S.Road, Bhangagarh, Guwahati-781007.

VERSUS

M/s. Brahmaputra Carbon Ltd. **: Respondent**
Industrial Estate, New Bongaigaon, Bongaigaon-783380 (Assam).

APPEARANCE:

Shri P.K.Ghosh, Authorized Representative for the Appellant

Shri B.N.Pal, Advocate for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75714/ 2025

DATE OF HEARING :17.03.2025

DATE OF DECISION:17.03.2025

Order : [Per Shri Ashok Jindal]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the Respondent was the manufacturer of Calcined Petroleum Coke (CPC) and claim exemption Notification no. 32/99-CE dated 08.07.99 which prescribes a value addition rate of 36% for the Respondent's product w.e.f 01.04.2008. From April, 2008 the appellant was given refund at the rate of 36% of value addition. The said amend was challenged by the Respondent and the Hon'ble Guwahati High Court vide order dated 24.06.2009 straight down the amendment in the notification no. 32/99 CE dated 08.07.99. In SLP

filed before the Hon'ble Apex Court against the order of Hon'ble Gujarat High Court in the case of M/s VVF ltd. the Hon'ble Supreme Court vide interim order dated 13.01.2012 directed the appellant to release 50% of the differential refund subject to the assessee furnishing a surety bond. On 28.01.2013, the Hon'ble Guwahati High Court also passed the similar order. Thereafter the Respondent filed a claim of refund for 50% of the differential amount for the period April, '08 to September'12 and also filed a surety bond. The refund claimed was sanctioned by order dated 09.05.2013 and 50% of the differential amount was given to the respondent.

3. The Respondent filed an appeal before Ld. Commissioner (Appeal) on the ground that differential duty paid after clearance was not taken into consideration while calculating. The Ld. Commissioner (Appeal) accepted this contention and allow the appeal by remand directing the authority to consider the duty paid through supplementary invoices.

4. Against the said order Revenue is in appeal.

5. On the ground that the duty paid in supplementary invoices are not entitled for refund. The Departmental Representative submits that the proceedings before the adjudicating authority was for sanctioning 50% of the differential refund [Duty paid from PLA-Refund already given]. It was not a proceeding for determination of the monthly refund. This exercise was done by the adjudicating authority when he passed the monthly refund orders denying the present claim of the respondent. The only remedy available to them was to file an appeal. IF they have filed an appeal, the claim will be decided

in that appeal and the matter cannot be agitated in this proceedings. If they did not file an appeal, the matter stands final and cannot be agitated in this proceedings. Therefore, in any event, this question cannot be raised here. Finally, with the Supreme Court deciding the issue against the appellant, the Commr (A's) order is not sustainable.

6. On going through the facts of the case we find that in this case the Ld. Commissioner (Appeal) has remanded matter back directing the Adjudicating Authority to consider the duty paid in supplementary invoices. The Respondent is entitled for 50% on value addition in terms of the interim order passed by the Hon'ble Apex Court on 13.01.2012. Therefore, we do not find any infirmity with the impugned order passed by the Ld. Commissioner (Appeal) for recalculation of the amount to be refunded to the Respondent. In that circumstances, we do not find any merit in the appeal filed by the Revenue.

7. Accordingly, same is dismissed.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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