IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. E/85709/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-743/2017-18 dated 30.11.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

Commissioner of CE & ST **Appellant**
Pune I

Vs.

Haripriya Engineering and Fabricators **Respondent**

Appearance:

Shri N.N. Prabhudesai, Supdt. (AR) for appellant
None for respondent

CORAM:

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing & Decision: 22.05.2018

FINAL ORDER NO. A/86805/2018

Per: Sanjiv Srivastava

In this case Revenue is in appeal against the order of Commissioner (Appeals) allowing the appeal filed by the party relying upon the judgment of the Hon'ble Gujarat High Court in the case of *Indsur Global Ltd. v. Union of India – 2014 (310) ELT 833 (Guj)*.

2. Nobody was present on behalf of the respondent. Heard learned Authorised Representative on behalf of Revenue.

3. Shri N.N. Prabhudesai, learned Authorised Representative submits that the decision of Gujarat High Court relied upon by the Commissioner (Appeals) has been challenged by way SLP before the Hon'ble Supreme Court and the same has been admitted and the order of the Hon'ble Gujarat High Court stayed vide order No. *2016 (335) ELT A109 (SC)*. Since the SLP has been admitted and stay granted, the matter should have not been adjudicated by the Commissioner (Appeals) and following the said decision of the Hon'ble Gujarat High Court. He referred to various judgements of this Tribunal wherein similar orders of Commissioner (Appeals) have been remanded back:-

(a) Savita Construction Pvt. Ltd. v. CCE, Vapi – 2018-TIOL-1207-CESTAT-AHM.

(b) M/s R.V. Refractories v. CCE, Chennai – 2018-TIOL-1408-CESTAT-MAD

Accordingly, he requested that this case may also be remanded back for adjudication only after the decision of Hon'ble Supreme Court in SLP filed in the Supreme Court.

4. Since the matter is on a very short compass with regards to the SLP which has been admitted and stay granted, the matter is taken up for disposal.

5. Following the earlier decision of this Tribunal referred above, the matter is remanded back to the adjudicating authority for decision only after the Hon'ble Supreme Court disposes of the SLP. The appeal filed by Revenue is allowed by way of remand.

(Order dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

nsk