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

**APPEAL NO: E/578/2010**

[Arising out of Order-in-Appeal No: SB (2) 2/MV/2010 dated 5th January 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai.]

*For approval and signature:*

**Hon'ble Shri C J Mathew, Member (Technical)**
**Hon'ble Shri Ajay Sharma, Member (Judicial)**

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| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : | Yes |
| 2. | Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | Yes |
| 3. | Whether Their Lordships wish to see the fair copy of the Order? | : | Seen |
| 4. | Whether Order is to be circulated to the Departmental authorities? | : | Yes |

Almech Enterprises … ***Appellant***

*versus*

Commissioner of Central Excise
Mumbai – V …***Respondent***

*Appearance:*

Shri MP Baxi, Advocate for appellant

Shri DS Chauhan, Superintendent (AR) for respondent

**CORAM:**

**Hon'ble Shri C J Mathew, Member (Technical)**
**Hon'ble Shri Ajay Sharma, Member (Judicial)**

**Date of hearing: 12/06/2018**
**Date of decision: 12/10/2018**

**ORDER NO: A/87617 / 2018**

*Per: C J Mathew*

The issue in this appeal of M/s Almech Enterprises against order-in-appeal no. SB (2)2/MV/2010 dated 5th January 2010 of Commissioner of Central Excise (Appeals), Mumbai is the leviability of duty on the transactions of the appellant in 2001-02 and 2002-03. The impugned order has upheld the order of the original authority for recovery of ₹ 14,80,984 under section 11A of Central Excise Act, 1944, along with interest thereon under section 11AB of Central Excise Act, 1944, and imposing penalty of like amount under section 11 AC of Central Excise Act, 1944.

2. Learned Counsel for appellant informs us that the appellant had been cutting aluminium profiles, pipes, tubes, glass, etc. from material supplied by customers and, after getting them anodised through other entities, had been affixing these as doors and windows at building sites of their customers. They had initially taken registration under Central Excise Act, 1944 but subsequently moved for de-registration

and, not receiving a response from the departmental authorities, had sought intervention of Hon'ble High Court of Bombay leading ultimately to a decision in their favour in the hands of the first appellate authority. He further informs us that, pursuant to audit, a show cause notice for recovery of ₹ 14,80,984 was issued to them on 2nd May 2006 which was decided against them and, thereafter, in the appellate proceedings now impugned before us, the demand was confirmed.

3. Learned Counsel also informs us that appeal of Revenue against the earlier order of the first appellate authority allowing them to de-register was disposed off by the Tribunal *[order no. A/87838/17/EB dated 26 May 2017 in appeal no. E/258/07-Mum]* directing a fresh decision by the original authority after issue of show because notice. In the remand proceedings, the original authority has held against the appellant and the dispute is currently pending with the first appellate authority.

4. He further contends that the impugned order is entirely at variance with the decision taken by the first appellate authority on the taxability of their activity and without the support of any contrary decision or stay of that order. It is further contended that, in the circumstances of an appeal pending against that order, the first appellate authority should have restrained itself from their hasty and

premature decision. Submitting that the activities of the appellant did not amount to manufacture, Learned Counsel seeks setting aside of the impugned order.

5. We have heard Learned Authorised Representative who places reliance on circulars of 2002 issued by Central Board of Excise & Customs as well as various decisions including that of the Larger Bench of the Tribunal in *Mahindra & Mahindra Ltd v. Commissioner of Central Excise [2005 (190) ELT 301 (Tri-LB)]*.

6. Having heard both sides, we take note of the pendency of a matter remanded by the Tribunal with direction to the lower authorities to decide on the dutiability of the goods made by the appellant which would effectively decide the dispute impugned before us now. And as the earlier decision on taxability had been remanded by us, it would be appropriate for us to have this matter also placed before the first appellate authority to take a decision in congruity with the dispute on de-registration pending before him.

7. For the above reasons, we set aside the impugned order and direct the first appellate authority to decide both matters together.

*(Pronounced in Court on 12/10/2018)*

**(Ajay Sharma)**
***Member (Judicial)***

**(C J Mathew)**
***Member (Technical)***

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