IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.I

Appln.E/CO/15/2011
APPEAL NO.E/721 to 723/2011 & E/383/11

(Arising out of Order-in-Appeal No.RBT/07/LTU/MUM/2011 dated 28/02/2011 & RBT/78/LTU/MUM/2010 dated 16/12/2010 passed by the Commissioner of Central Excise (Appeals), Mumbai)

Commissioner of Customs & Central Excise : **Appellant**
(LTU), Mumbai

VS

Everest Kanto Cylinder Ltd., : **Respondent**

Appearance

Shri.Sanjay Hasija, Supdt. (AR) for Appellant
None for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 12/02/2019
Date of decision : 12/02/2019

ORDER NO. A/85642-85645 / 2019

Per : Dr. D.M. Misra

1. These appeals are filed by the Revenue challenging the respective orders-in-appeal passed by the Commissioner of Central Excise (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the appellants had filed refund claims of Central Excise duty based on the area based

exemption Notification No.39/2001-CE dated 31/07/2001 during the relevant period. The refund claims were rejected by the adjudicating authority. Aggrieved by the same, they filed appeal before the learned Commissioner (Appeals), who in turn allowed their appeals. Hence, the Revenue is in appeal.

3. Learned AR for the Revenue has submitted that the learned Commissioner (Appeals), following the judgements of the Hon’ble Gujart High Court in the case of Sal Steel Ltd – 2010 (260) ELT 185 allowed the refund claims in excess of 39% of the total duty paid. It is his contention that the order of the Hon’ble Gujarat High Court has been stayed by the Hon’ble Supreme Court on an SLP filed by the Revenue challenging the said judgement of Hon’ble Gujarat High Court. Learned Commissioner (Appeals) since passed the order prior to the stay order issued by the Hon’ble Supreme Court, therefore, the matter may be remanded to the adjudicating authority to decide the issue afresh, taking into consideration the outcome of the SLP pending before the Hon’ble Supreme Court. He submits that a similar view has been expressed by this Tribunal in the case of Gallantt Metal Ltd’s case, vide order No.A/11224/2018 dated 20/06/2018.

4. We have carefully considered the submissions made by the learned AR for the Revenue. We find that while allowing refund claim under the area based exemption Notification No.39/2001-CE dated 31/07/2001, the learned Commissioner has relied upon the judgements of the Hon’ble Gujarat High Court in the case of Sal Steel Ltd. case (supra). The said decision of the Hon’ble Gujarat High Court

has been stayed by the Hon'ble Supreme Court subsequently, i.e., on 13/01/2012. The learned AR submits that the SLP is still pending disposal before the Hon'ble Supreme Court. In these circumstances, we agree with the plea of the learned AR for the Revenue that the matter needs to be remanded to the adjudicating authority to decide the case on the basis of the outcome of the SLP pending before the Hon'ble Supreme Court.

5. In view of the above, Revenue's appeals are disposed off by way of remanding the matter to the adjudicating authority. Cross Objection is also disposed of.

(Pronounced in Court)

(P Anjani Kumar)
Member (Technical)

(D.M. Misra*)*
Member (Judicial)

PJ