CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CENTRAL EXCISE APPEAL NO: 919 of 2011

[Arising out of Order-in-Original No: 17/CSP(17)/COMMR/RGD/10-11 dated 11th March 2011 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad.]

Commissioner of Central Excise, Customs & Service Tax … ***Appellant***
Raigad.
Kendriya Utpad Shulk Bhavan, Plot No. 1
Sector 17, Khanda Colony, New Panvel – 412 206

versus

Castrol India Ltd ***…Respondent***
Plot No. A-8/A-14 MIDC, Patalganga Industrial Area
Patalganga, Dist: Raigad

APPEARANCE:

Shri R K Dwivedi, Additional Commissioner (AR) for the appellant

Shri Amogh Joshi, Dy Manager, IDT of the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86109 / 2019

DATE OF HEARING: 06/05/2019
DATE OF DECISION: 06/05/2019

PER: C J MATHEW

Revenue is in appeal against order-in-original no. 17/CSP(17)/COMMR/RGD/10-11 dated 11th March 2011 of

Commissioner of Central Excise, Customs & Service Tax, Raigad which had dropped the proceedings initiated for recovery of duties of central excise amounting to ₹ 1,14,45,772/-. The respondent had been clearing by recourse to the mechanism that goes with provisional assessment but in the absence of appropriate permissions under the Central Excise Rules, 2002, and availing abatement of ineligible discounts in computing assessable value. The adjudicating authority dropped the proceedings as it has held that the proper officer, though approached for provisional assessment, had incorrectly denied permission and that the deductions had also been disallowed without proper appreciation. The invoking of section 11A of Central Excise Act, 1944 when assessments had not been finalized was also held to be invalid.

2. We have heard Learned Authorised Representative and Shri Amogh Joshi, representing the respondent.

3. It is seen that the present dispute arises from denial of provisional assessment and the devolution of detriments in consequence. Against the denial of permission for resort to provisional assessment, which had been upheld by the first appellate authority, the respondent herein had sought relief from the Tribunal, which, by order no. A/3884/15 dated 16th November 2015, held that the assessment should be permitted as provisional and that the various

aspects of objections to abatement could be considered at the time of finalisation. The present status of the finalization of the assessment is not known.

4. As the appeal of Revenue lies against the demand raised consequent upon denial of permission for provisional assessment which has since been allowed by the Tribunal *supra*, the present appeal becomes infructuous and is dismissed, accordingly.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as*