

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**Excise Appeal No: 504 of 2008**

[Arising out of Order-in-Original No: 37/SLM/(37)/COMMR/RGD/07-08/4649 dated 31<sup>st</sup> January 2008 passed by the Commissioner of Central Excise, Raigad.]

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

*versus*

Reliance Industries Ltd *...Respondent*  
B-4, MIDC, Patalganga, Raigad

**APPEARANCE:**

Shri Hitesh Shah, Commissioner (AR) and Shri Bidhan Chandra, Additional Commissioner (AR) for the appellant

Shri Vipin Jain, Advocate, Shri Nikhi Rungta and Shri Ramnath Prabhu, Advocate with Ms Shilpa Balani, Advocate for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)  
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: A/88565 / 2018**

DATE OF HEARING: 20/12/2018  
DATE OF DECISION: 20/12/2018

**PER: C J MATHEW**

This appeal lies against order-in-original no. 37/SLM/(37)/  
COMMR/RGD/07-08/4649 dated 31<sup>st</sup> January 2008 of Commissioner

of Central Excise, Raigad. In order to appreciate the peculiarity of this appeal of Revenue it would be appropriate to recall certain milestones. The respondent herein had sought refund of ₹16,12,52,087/- under rule 5 of CENVAT Credit Rules, 2004 for the period from January 2006 to March 2006 which was sanctioned *vide* order dated 10<sup>th</sup> January 2007 of the competent authority. After due review, in accordance with section 35E(2) of Central Excise Act, 1944, Commissioner of Central Excise, Raigad directed filing of appeal against the said sanction before the first appellate authority which was duly complied with on 4<sup>th</sup> May 2007. In the meanwhile, on the basis of objections raised by audit, a protective demand under section 11A of Central Excise Act, 1944 was issued by the Commissioner of Central Excise, Raigad on 11<sup>th</sup> April 2007 for recovery of the refunded amount which was dropped by the impugned order.

2. The present appeal of Revenue lies against the dropping of the said show cause notice for protective demand. In the impugned order, besides examining the issue on merits, the adjudicating authority has referred to the disposal of the appeal filed against the order sanctioning refund which had upheld the sanction. It was opined by the adjudicating authority that the order-in-appeal no SRK/460/RGD/2007 dated 22<sup>nd</sup> November 2007 had been reviewed and accepted by the competent committee of Commissioners. It is in these peculiar circumstances that the appeal of Revenue before us must be decided.

3. We have heard Learned Authorised Representative and Learned Counsel for the respondent herein.

4. The primary ground of Revenue is that the matter should have been kept pending by the adjudicating authority in 'call book' in view of the pendency of the audit objection.

5. We find that the issue can be decided on the basis of this ground alone without going into the merits of the issue which, having been considered at length by the first appellate authority, was adopted by the adjudicating authority in the impugned order. It would appear that the plea of Revenue before us is to reverse the decision on the show cause notice till the final settlement of audit objection between the Department of Revenue and the Comptroller & Auditor General of India. We must take note here that these are internal procedures with which we, as an appellate authority, are not concerned.

6. With the acceptance of the decision of the Commissioner of Central Excise (Appeals) on the non-taxability of the amount sanctioned as refund, there can be no doubt on the merits of the sanction. To decide the merits in the appeal before us would be tantamount to deciding an order of the first appellate authority which is not before us. We cannot thus frustrate the appellate jurisdiction and appellate procedure laid down in the Central Excise Act, 1944. Even if the show cause notice leading to the present impugned order were to be

kept in abeyance, and notwithstanding the settlement of the audit objection between the Department of Revenue and the Comptroller and Auditor General of India, the appeal filed against the decision to sanction refund cannot be altered.

7. In these circumstances, we find that the only disposal of the present appeal is to dismiss it and we do so.

*(Pronounced in open court)*

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

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