CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1256 of 2012

(Arising out of Order-in-Original No. 40/2012/C dated 28.05.2012 passed by Commissioner of Central Excise & Customs, Nagpur)

M/s. Murli Industries Ltd. **Appellant**
(Duplex Paper Unit),
27th K.M. Stone, Nagpur Bhandara Road,
Village Vadoda, Dist. Nagpur.

Vs.

Commissioner of Central Excise, Nagpur **Respondent**
Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur 440 001.

Appearance:

Shri Rajesh Ostwal, Advocate, for the Appellant
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 09.03.2022
Date of Decision: 09.03.2022

FINAL ORDER NO. A/85194/2022

PER: SANJIV SRIVASTAVA

This matter has been listed for final hearing today.

2.1 We have heard Shri Rajesh Ostwal, Advocate, for the appellant and Shri Sanjay Hasija, Superintendent, Authorised Representative for the Revenue.

2.2 Learned counsel appearing for the appellant submits that Resolution Plan dated 20.12.2017 in the case of the appellant company was prepared by the Resolution Professional and approved by the National Company Law Tribunal (NCLT) vide its order dated 03.07.2019 & 22.07.2019. Revenue had also made its claim before the Resolution Professional vide its letter dated 12.05.2017. The Deputy Commissioner, CGST & Central Excise, Division – Chandrapur, who was concerned with, also vide his letter dated 28.09.2017 made his claim before the Resolution Professional in respect of the confirmed demands which are annexed at Annexure A to the letter of the Deputy Commissioner. All these demands were taken into consideration while approving the Resolution Plan. This Resolution Plan has been approved by the NCLT vide its order dated 03.07.2019 & 22.07.2019 and the appeal filed against the order of NCLT was dismissed by the National Company Law Appellate Tribunal (NCLAT) vide its order dated 24.01.2020. This order of NCLAT has been accepted by the Revenue as is evident from the letter dated 25.01.2021 of the Superintendent (Legal), CGST & Central Excise, Nagpur-I.

2.3 In view of the above position and the decision of the Hon'ble Supreme Court in the case of Ghanashyam Mishra & Sons [2021 (9) SCC 657], this appeal becomes infructuous and has to be abated in terms of Rule 22 of the CESTAT (Procedure) Rules, 1982.

2.4 Learned Authorised Representative for the Revenue admits to the position as stated by the counsel.

3.1 We have considered the submissions made.

3.2 A three judges bench of Hon'ble Supreme Court has in the case of Ghanashyam Mishra & Sons [2021 (9) SCC 657] considered similar issue and framed the following questions as per para 2 and gave their verdict in respect of these questions in para 95. These are reproduced below:

"2. The short but important questions, that arise for consideration in this batch of matters, are as under:-

(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the Resolution Plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code')?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?

CONCLUSION

95. In the result, we answer the questions framed by us as under:

(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in 104 respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”

3.3 In view of the above position, this Tribunal has no jurisdiction to entertain the present appeal. The same is accordingly abated in terms of Rule 22 of CESTAT (Procedure) Rules, 1982.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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