CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 789 of 2012

(Arising out of Order-in-Appeal No. BC/326/BEL/2011-12 dated 23.02.2012 passed by the Commissioner of Central Excise (Appeals) Mumbai Zone-II.)

M/s Budhraja Packaging Pvt. Ltd. ....Appellant
Plot No. D-13/4, TTC Industrial Area,
Turbhe, Navi, Mumbai – 400 705.

VERSUS

Commissioner of CGST & ....Respondent
Central Excise, Belapur
1st Floor, C.G.O. Complex,
CBD, Belapur, Navi Mumbai – 400 614.

<u>APPERANCE:</u>

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

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85320/2022

Date of Hearing: 07.04.2022
Date of Decision: 07.04.2022

Learned Counsel for the Appellant expresses his desire to withdraw the appeal from this Tribunal for the purpose of filling the same before the Competent authority namely Revisionary Authority, Government of India and he has also accepted the objection raised by the learned AR concerning jurisdictional issues which has been settled by the Larger Bench of this Tribunal in the case of *M/s Sai Wardha Power Ltd. Vs. Commissioner of Central Excise,* *Nagpur* reported in *2016 (332) ELT 529 (Tri. – LB)* and followed in subsequent decisions. Learned Counsel for the Appellant, in submitting judicial decisions in the case of *MP Steel Corporation Vs. CCE* reported in *[2015 (319) ELT 373]* prays to this Bench to record the findings of MP Steel Corporation that taking spirit of the Indian Limitation Act, the period in which this appeal has been prosecuted in this forum erroneously should have been excluded in view of the provision contained in Section 14 of the Indian Limitation Act. Additionally he submits that when the appeal was filed before this CESTAT, way back in 2012, it had ample jurisdiction to decide the appeal and the restriction came into force after the decision of Larger Bench pronounced on dated 17.12.2020 in M/s Sai Wardha Power Ltd. case.

2. Having regard the submissions and having regard to the present position of law, the Appellant is allowed to withdraw the appeal so as to enable it to file the same before the appropriate authority namely Divisional Commissioner of Government of India who is expected to honour the decision of Hon'ble Supreme Court in excluding the period in which the appeal has been pending in this forum, as this Bench has become *functius officio* to allow such relief to the Appellant.

3. With this observation, the appeal stands dismissed as withdrawn with right to re-file the same before the Competent Authority.

(Dictated & pronounced in open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

sujeet