

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

WEST ZONAL BENCH

Excise Appeal No. 191 of 2011

(Arising out of Order-in-Appeal No. V(2)/248-CE/NGP/APPL/RT/2010 dated 29.10.2010 passed by the. Commissioner of Central Excise & Customs (Appeals), Nagpur.)

M/s. Murli Industries Ltd.
Radha House, 239,
East Wardhaman Nagar,
Nagpur

.....Appellant

VERSUS

**The Commissioner of Central Excise &
Customs, Nagpur**
GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur

.....Respondent

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellant
Shri P.K. Acharya, Supdt.(AR) for the respondent

CORAM: HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86047 / 2022

DATE OF HEARING : 31.10.2022
DATE OF DECISION : 03.11.2022

This appeal has been filed by Appellant challenging the Order-in-Appeal No. V(2)/248-CE/NGP/APPL/RT/2010 dated 29.10.2010 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.

2. Learned counsel for the appellants submits that Resolution Plan dated 20.12.2017 for the appellant company was approved by learned National Company Law Tribunal (hereinafter referred

to as "NCLT) vide its order dated 3.7.2019 and some of the paragraphs of the said order were clarified by learned NCLT vide its order dated 22.7.2019 and appeal against the said order of NCLT was dismissed by the learned National Company Law Appellate Tribunal ("NCLAT") vide order dated 24.1.2020 by upholding the order dated 22.7.2019 of learned NCLT. He therefore submits that in view of the above no demand in the present case survive and also prayed for refund of pre-deposit of the amount. Per contra learned Authorised Representative appearing for Revenue submits that in view of the *Final order No. A/85194/2022 dated 9.3.2022 of this Tribunal in appellant's own case i.e. Excise Appeal No.1256 of 2012, M/s. Murli Industries Ltd. vs. CCE, Nagpur*, the instant appeal of the appellant becomes infructuous and liable to be abated in terms of Rule 22 of CESTAT (Procedure) Rules, 1982. He further submits that the Resolution Plan submitted by M/s. Dalmia Cement Ltd. was accepted by the learned NCLT and therefore the appellant herein has ceased to exist as soon as the plan is accepted by the NCLT and since thereafter M/s. Dalmia Cement is only authorised to file continuance application under Rule 22 *ibid* which has not been filed by them therefore the appeal of Murali Industries abated.

3. I have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submission and the case laws submitted by the respective sides. It is not disputed that the Resolution Plan for the appellant company was approved by Learned NCLT vide its orders dated 3.7.2019 and 22.7.2019. As per Section 31(1) of I&B Code, once a resolution plan is duly approved by the Adjudicating Authority, 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 stake holders. In the

instant case the Resolution Plan was approved by the learned NCLT vide its order dated 3.7.2019 and certain clarifications in some paragraphs of the order were made by the learned NCLT vide its order dated 22.7.2019. The relevant paragraphs of the order dated 22.7.2019 of the learned NCLT is reproduced below:-

"xxx

xxx

xxx

93. The Resolution Applicant has sought extinguishment of all claims. However, it is clarified that only crystallised liabilities of the Corporate Debtor shall stand extinguished on the approval of this resolution plan. All claims that were either not filed or not admitted during CIRP in terms of the provisions of the insolvency and bankruptcy code, 2016 shall stand extinguished. Further, the claims admitted/verified by the Resolution Professional shall stand settled and extinguished as per the Resolution Plan.

94. The Resolution Applicant has sought extinguishment of all claims along with abatement of any related legal proceeding including criminal proceedings. Such proceedings shall proceed by law. Any undertaking relating to applicability of law will not be part of resolution plan."

It is also not disputed that the aforesaid order of learned NCLT has been upheld by the learned NCLAT vide its order dated 24.1.2020 therefore the conditions/terms as contained in the order of learned NCLT cannot be altered and are binding.

4. The Resolution Plan herein as well as the aforesaid order of learned NCLT and the law laid down by the Hon'ble Supreme Court in the matter of *Ghanshyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss ARC*; (2021) 9 SCC 657, has already been taken into

consideration by this Tribunal while disposing of another appeal in appellant's own case *vide Final order No. A/85194/2022 dated 09.03.2022 M/s. Murli Industries Ltd. vs. CCE, Nagpur (supra)*. The relevant paragraphs of the said order are reproduced as under:-

"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.

Xxx xxx xxx

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."

5. I have also seen the *Final Order No. A/85969-85970/2022 dated 19.10.2022 in the matter of M/s. Alok Industries Ltd. vs. CCE, Belapur* of this Tribunal in similar circumstances in which it has been held that the appeal abates in terms of Rule 22 *ibid* with effect from the date of approval of resolution plan by learned NCLT. The relevant paragraphs of the said order are also reproduced below: -

"xxx xxx xxx

4.9 We are satisfied that the test laid down by the Hon'ble High Court is applicable in the present case for us to hold so. It is quite interesting to note that applicant to the extent of demand made finds the order of NCLT binding and wants pronouncement in respect of the refund by this tribunal. Can we sit in judgement over the order of NCLT approving the resolution plan? Further issue of refund is any case not the issue raised in appeal it is for the applicant to approach the relevant authorities in the matter.

4.10 In view of above we dispose of the appeals and the miscellaneous application as follows:

5.1 The appeals filed abate as per the Rule 22 of the CESTAT Procedure Rules, 1982, with effect from the date of the approval of the resolution plan by the NCLT."

6. Learned counsel for the appellant placed reliance on the decision of a co-ordinate Bench of the Tribunal in the matter of *Final Order No. A/11268/2022 in Customs Appeal No. 45 of 2012; M/s. Ultratech Nathdwara Cement Ltd. vs. CC, Jamnagar (Prev)* in which it has been held that although in such cases appeal has become infructuous but Rule 22 cannot be said to be applicable on such cases. But in my considered view the decision of this very Tribunal in appellant's own case (*supra*) on similar facts has the binding effect since as per the records available, the same has not been challenged by the appellant before any higher forum and has attained finality. Following the same, I am of the view that the appeal filed by the appellant herein has become infructuous and abated in terms of Rule 22 of CESTAT (Procedure) Rules, 1982.

7. As the appeal has already been abated therefore in my considered view the appellant cannot claim any refund before this Tribunal of any pre-deposit made by them before the Commissioner (Appeals), as the power which Hon'ble Supreme Court/High Courts can exercise are not available with this Tribunal. For that the appellants are at liberty to seek redressal before the appropriate forum, in accordance with law.

(Pronounced in open Court on 03/11/2022)

(Ajay Sharma)
Member (Judicial)