CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 86988 of 2013

(Arising out of Order-in-Appeal No. RPS/27/NSK/2012 dated 24.01.2013 passed by the Commissioner of Central Excise & Customs (Appeals), Nashik).

M/s. Damodar Jagannath Malpani ....Appellant
Survey No. 48/2,3,
Malpani Estate Ltd.
Kasara Dumala,
Sangamner- 422 605

VERSUS

Commissioner of Central Excise, Nashik ....Respondent
Kendriya Rajaswa Bhawan,
Gadkari Chowk, Nasik – 422 002

WITH

Excise Appeal No. 2846 of 2005

(Arising out of Order-in-Original No. 14/CEX/2005 dated 18.05.2005 passed by the Commissioner of Central Excise & Customs, Nashik).

M/s. Damodar Jagannath Malpani ....Appellant
Akola Road, Kasara Dhumala,
Sangamaner – 422 605.

VERSUS

Commissioner of Central Excise, Nashik ....Respondent
Kendriya Rajaswa Bhawan,
Gadkari Chowk, Nasik – 422 002.

AND

Excise Appeal No. 2847 of 2005

(Arising out of Order-in-Original No. 14/CEX/2005 dated 18.05.2005 passed by the Commissioner of Central Excise & Customs, Nashik).

M/s. Damodar Jagannath Malpani ....Appellant
Akola Road, Kasara Dhumala,
Sangamaner – 422 605.

VERSUS

Commissioner of Central Excise, Nashik ....Respondent
Kendriya Rajaswa Bhawan,
Gadkari Chowk, Nasik – 422 002.

APPERANCE:

Shri Prasant Patankar, Advocate for the Appellant

Shri P. K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85710-85712/2023

Date of Hearing: 25.04.2023
Date of Decision: 25.04.2023

PER: BENCH

Legality of the order passed by the Commissioner of Central Excise & Customs, Nashik on dated 18.05.2005 confirming duty demand on Dharmada charges and transit insurance charges by including those in the assessable value is assailed in these three appeals.

2. Fact of the case, in brief, is that Appellant is a manufacturer of chewable tobacco and it has been discharging Central Excise duty liability while clearing goods to its customers. It was collecting transit insurance as an optional provision and was holding the amount itself taking responsibility of coverage of damage without paying the same as premium to any insurance company. For the period from 01.07.2004 to 31.07.2005, 01.08.2005 to 30.06.2006 and 01.07.2006 to 31.05.2007 duty demand alongwith interest and penalty were proposed through three show-cause notices

respectively on insurance charges collected by it holding the same as includable in the assessable value. Appellant contested the same, suffered adjudication process in which duty demand alongwith interest and penalty were confirmed, preferred appeals before the Commissioner (Appeals) and being unsuccessful approached to CESTAT through these three appeals. The appeals were dismissed with liberty to restore the same as Appellant intended to wait for the order of the Hon'ble Supreme Court of India filed by the Appellant itself against CESTAT order dated 06.01.2005 in respect of inclusion of Dharmada charges in the assessable value, that would have a bearing on the present litigation. Appellant succeeded in its appeal wherein CESTAT order holding Dharmada charges as includable in the assessable value in set aside. The said order is reported in *2019 (366) ELT 855 (SC)* and by filing a copy of the said order at the instance of the Appellant, these appeals are restored back to files.

3. During the course of argument learned Counsel for the Appellant submitted that the matter being similar to the issue that has been decided by the Hon'ble Supreme Court in Appellant's own case, these appeals are to be decided in the same manner following the judicial precedent. He further added that in Appellant's own case for the earlier period from 01.03.2000 to 31.12.2002 learned Dy. Commissioner of the concerned jurisdiction had dropped the demand following decision of the Hon'ble Supreme Court reported in *2002 (146) ELT 31 (SC)* in which case Tribunal has also given a favourable order in the appeal preferred by adversaries and the same finding is

apparently accepted by the Department. This being the facts on record and position of law, we are of the considered opinion that judicial precedent, as set by the Hon'ble Supreme Court, is to be followed in these appeals without going into the issue and its analysis further. Hence the order.

THE ORDER

4. The appeals are allowed and the order passed by the Commissioner of Central Excise & Customs (Appeals), Nashik *vide* Order-in-Appeal No. RPS/27/NSK/2012 dated 24.01.2013 and passed by the Commissioner of Central Excise & Customs, Nashik *vide* Order-in-Original No. 14/CEX/2005 dated 18.05.2005 are hereby set aside with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad