CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1194 OF 2012

[Arising out of Order-in-Appeal No: BC/109/MUM-III/2012-13 dated 22nd June 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Raymond Limited
Pokhran Road No.1, Jekegram, Thane – 400606 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
Vardaan Trade Centre, 4th Floor, Road No. 16, MIDC
Wagle Industrial Estate, Thane (W) – 400 604 ***…Respondent***

WITH

EXCISE APPEAL NO: 1195 OF 2012

[Arising out of Order-in-Appeal No: BC/108/MUM-III/2012-13 dated 22nd June 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Raymond Limited
Pokhran Road No.1, Jekegram, Thane – 400606 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
Vardaan Trade Centre, 4th Floor, Road No. 16, MIDC
Wagle Industrial Estate, Thane (W) – 400 604 ***…Respondent***

APPEARANCE:

Shri Prakash Shah, Advocate for the appellant

Shri Bhilegaonkar Deepak, Additional Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A / 86013-86014/2023

DATE OF HEARING:	30/05/2023
DATE OF DECISION:	30/05/2023

PER: C J MATHEW

The sole issue for determination in these appeals of is the conformity of appellate determination, against M/s Raymond Limited in order of Commissioner of Central Excise (Appeals), Mumbai – III, as legal and proper in setting aside the refund sanctioned by the original authority. The matter was with the original authority for the second time on remand by the Tribunal; hence, disposal of appeal by the first appellate authority was to have been limited to ascertainment that the original authority had complied with the remand order.

2. We have heard Learned Counsel for the appellant and Learned Authorised Representative at length.

3. The first of the appeals pertains to order[1] depriving refund of unutilized balance in CENVAT credit account claimed to be entitled owing to circumstances following exemption of their final products from duties of central excise with effect from July 2004. *Vide* application dated 9th August 2007, credit of ₹ 31,20,523/- was sought to be refunded to them. The appellant had been discharging basic

[1] [order-in-appeal no. BC/109/MUM-III/2012-13 dated 22nd June 2012]

excise duty and additional duties of excise on goods that were cleared to their own units, and upon issue of relevant notification, opted for exemption on clearance and, in relation to exports under bond, had been utilizing CENVAT credit on inputs and capital goods. On rejection of the claim for refund that was upheld by the first appellate authority in order dated 1st May 2008, the dispute was carried to the Tribunal and, by order dated 23rd June 2011, it was directed that

> *'10. The matter is remanded back to the adjudicating authority to ascertain the fact whether the appellant has reversed the CENVAT credit involved in inputs, work-in process and finished goods lying in stock on 9-7-2004. If the appellant has reversed, then the balance amount accumulated unutilized in CENVAT credit account shall be sanctioned and refunded in cash. With these observations, the appeal is allowed by way of remand to examine as directed above. The refund claim of the appellant shall be disposed of within one month of the receipt of this order.'*

4. In the remanded proceedings, the sanctioning authority permitted refund of ₹ 31,20,523/- after carrying out the verification ordered by the Tribunal. The said decision of the original authority was challenged by the Assistant Commissioner of Central Excise, on direction of the competent authority to review orders, and allowing of the appeal has brought the issue before us.

5. According to Learned Authorized Representative, the reversal of the order of the first appellate authority by the Tribunal had been

challenged but withdrawn thereafter owing to threshold limit in the litigation policy[2] of the Central Government. It was argued that the sanction of the original authority had also not awaited review on the ground that application for refund could not be kept pending. It was, therefore, contended by Learned Counsel that first appellate authority was competent to decide on entitlement for refund in the same manner as the original should have but did not.

6. This does not impress us overly; the prescription of threshold limits for litigation does not preclude contest of disputes pertaining to issues having grave ramifications and, instead of placing such reasons before the Hon'ble High Court, Revenue chose not to agitate further implying that the decision of the Tribunal did not involve such substantial point of law as to merit deviating from the litigation policy. Accordingly, it was not open to the first appellate authority, let alone the appellant-Commissioner, to suggest that remand order of the Tribunal could be defied. The review carried out by the competent authority is, therefore, entirely out of the order.

7. Finality of the order of the Tribunal is beyond question and it was incumbent upon central excise formations to implement the order without let or hindrance. The original authority took cognizance and proceeded to render the appropriate conclusion. The jurisdictional

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[2] [F. No. 390/MISC/163/ 2010- JC dated 11th August 2011]

Commissioner of Central Excise took the path of disregard duly acclaimed in full measure by the first appellate authority.

8. Learned Counsel urged us to consider the sternness evidenced in the ruling of the Hon'ble Supreme Court thus

> *'6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not*

"acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the

> *Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.*
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> *8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.'*

in *Union of India v. Kamlakshi Finance Corporation Ltd [1991 (55) ELT 433 (SC)]*

9. By transgressing the direction of the Tribunal and seeking recourse from Commissioner of Central Excise (Appeals), the reviewing authority is in the very same jeopardy that caused admonishment *supra* the Hon'ble Supreme Court. This cannot be tolerated by any stretch. The first appellate authority is in no less of jeopardy for the original authority has clearly attested to the urgency in implementing the order without awaiting the outcome of review.

10. Accordingly, nothing survives in the impugned orders and, except for us to adjure the supervisory administration to deal appropriately with the first appellate authority and reviewing Commissioner for grave misconduct in impeding the implementation of the order of the Tribunal, we have nothing to do but to allow the appeals of M/s Raymond Ltd with consequential relief, if any.

(Operative part of the order pronounced in the open court on 30th May 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*