CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88209 OF 2013

[Arising out of Order-in-Appeal No: 133/BPS/MUM/2013 dated 22nd April 2013 passed by the Commissioner of Central Excise & Service Tax (Appeals-IV), Mumbai – I.]

Reliance Industrial Products
Plot No. C-10 MDIC Tarapur, Boisar, Dist: Thane … ***Appellant***

versus

Commissioner of Central Excise
Thane – II
Navprabhat Chambers, Ranade Road
Dadar (W), Mumbai - 400028 ***…Respondent***

WITH

EXCISE APPEAL NO: 88213 OF 2013

[Arising out of Order-in-Appeal No: 133/BPS/MUM/2013 dated 22nd April 2013 passed by the Commissioner of Central Excise & Service Tax (Appeals-IV), Mumbai – I.]

Commissioner of Central Excise
Thane – II
Navprabhat Chambers, Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Reliance Industrial Products
Plot No. C-10 MDIC Tarapur, Boisar, Dist: Thane ***…Respondent***

APPEARANCE:

Shri Archit Agarwal, Advocate for the assessee-appellant

Shri P K Acharya, Superintendent (AR) for Revenue

CORAM:

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

FINAL ORDER NO: 87201-87202/2023

DATE OF HEARING: 28/06/2023
DATE OF DECISION: 06/12/2023

PER: C J MATHEW

Both Revenue and the assessee, M/s Reliance Industrial Products, are in appeal against order[1] of Commissioner of Central Excise & Service Tax (Appeals-IV), Mumbai – I which had remanded the matter back to the adjudicating authority adducing that.

> *'9. Now, having come to a conclusion that the impugned order is void, I am left with following two choices:-*
>
> *(a) either to set aside order of original authority on ground of appeals and allow the appeal of the Appellants; or*
>
> *(b) to remand the matter back to the original adjudicating authority for passing a decision afresh after considering the exact value and allowing the correct discounts to the Appellants.*
>
> *I will prefer to opt for the second option as that would be in the interest of Revenue.'*

2. The appeal of Revenue contends that the first appellate authority was bereft of statutory empowerment to remand any proceedings and, therefore, should have decided the appeal on merits.

[1] [order-in-appeal no. 133/BPS/MUM/2013 dated 22nd April 2013]

M/s Reliance Industrial Products challenges the remand on the ground that the impugned order having been held to be void, the sole option available before the adjudicating authority was to set aside the order impugned.

3. We find that the issue in dispute pertains to the finalization of duty liability on ‘plastic pipes and fittings’, cleared by M/s Reliance Industrial Products in 2009-10, that had been provisionally assessed, at their request, owing to actual discount being known only at the end of the year. The appellant was required to furnish relevant documentation by 31st January 2010 but instead, by letter dated 22nd December 2010, sought extension of time up to 15th January 2011 and despite such permission not having been granted, further documents were provided only *vide* letter dated 23rd February 2011 following which notice came to be issued to them culminating in the finding of the original authority on differential duty of ₹ 54,75,941/- in accordance with rule 7(3) of Central Excise Rules, 2002 along with appropriate interest as provided in rule 7(4) of Central Excise Rules, 2002.

4. We find that the order of the first appellate authority has not gone into several of the submissions made on behalf of the appellant-assessee. The conclusion of the impugned order being void is bereft of any analysis to appreciate the correctness thereof. It would,

therefore, appear that the impugned order is an inadequate exposition of the law and findings thereof warranting the matter to be decided afresh.

5. Accordingly, the impugned order is set side and the matter restored to the first appellate authority for fresh decision after considering the submission of the assessee and taking note of the details submitted thereof.

6. Accordingly, both appeals are disposed off.

(Order pronounced in the open court on 06/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*