CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85923 of 2017

(Arising out of Order-in-Appeal No. KLH-EXCUS-000-APP-171-172/2016-17 dated 06.01.2017 passed by the Commissioner (Appeals-II), Central Excise & Service Tax, Kolhapur.)

Medispray Laboratories Limited **.... Appellants**
(Formerly known as Okasa Pharma Private Limited)
Plot No.L2, Additional MIDC, Taluka Satara
District Satara, Maharashtra – 415 004.

Versus

Commissioner of CGST & Central Excise, Kolhapur Commissionerate **.... Respondent**
Vasant Plaza Commercial Complex, 4th&5th Floors,
Rajaram Road, Bagal Chowk,
Kolhapur – 416 001.

APPEARANCE:

Ms. Hanisha Jatania along with Ms. Payal Nahar, Advocates for the Appellants

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86997/2025

Date of Hearing: 27.11.2025
Date of Decision: 27.11.2025

Per: M.M. Parthiban

This appeal has been filed by M/s Medispray Laboratories Limited (formerly known as M/s Okasa Pharma Private Limited), Kolhapur (herein after referred to, for short, as "the appellants") assailing the Order-in-Appeal No.KLH-EXCUS-000-APP-171-172/2016-17 dated 06.01.2017 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner (Appeals-II), Central Excise & Service Tax, Kolhapur.

2.1 The relevant facts that arise for consideration in this case are that the appellants herein is a manufacturer of pharmaceutical products falling under Chapter heading 3003 of the First Schedule to the Central Excise Tariff Act, 1985 and for this purpose they are registered with jurisdictional Central

Excise authorities holding Central Excise registration No. AAACO0477aXM001. The appellants are eligible to avail CENVAT credit of duties and taxes paid on inputs, capital goods and input services received by them for manufacture of final products in terms of CENVAT Credit Rules, 2004 (CCR of 2004).

2.2 During the disputed period from January, 2011 to March, 2011, the appellants have cleared the manufactured goods both to the domestic buyers on payment of appropriate Central Excise duty; as well as for export under Bond without payment of Central Excise duty under various schemes such as Drawback, DEPB, DEEC/Advance License, etc. Owing to the reason of exportation of goods, without payment of Central Excise duty, the appellant had accumulated CENVAT credit and had claimed refund of such accumulated CENVAT Credit lying in their Books of Accounts under Rule 5 of CCR of 2004 read with Notification No.5/2006-Central Excise (N.T.) dated 14.03.2006. The refund application filed by the appellants was favorably considered by the original authority vide Order-in-Original dated 02.04.2012 by sanctioning the refund claim of Rs.35,35,244/- to the appellants. However, feeling aggrieved with the said original order, the Department had preferred appeal before the learned Commissioner (Appeals), which was disposed of vide Order-in-Appeal dated 30.11.2012 in allowing the appeal in favour of the Department and setting aside the order granting such refund. In support of the rejection of refund benefit in favour of the appellants, the learned Commissioner (Appeals) has recorded the findings that the inputs procured under DEEC/Advance License Scheme has not suffered any duty and hence, availment of refund for export under such schemes would tantamount to double benefit to the appellant.

2.3 Being aggrieved with the order of the Commissioner (Appeals) dated 30.11.2012, the appellant had preferred this appeal before the Tribunal. In the meantime, the department had also issued a protective Show Cause Notice (SCN) cum demand dated 01.04.2013 for recovery of refund amount sanctioned earlier. In disposing the appeal filed against the order of the Commissioner (Appeals) dated 30.11.2012 along with stay application, the Co-ordinate Bench of the Tribunal vide Final Order No. S/1021/13/EB/C-II dated 29.07.2013, had disposed of the appeal No. E/86062/2013 along with stay petition filed by the appellant, on the ground that the applicant-appellants had separately received a SCN dated 01.04.2013 for recovery of erroneous refund from the Department, which is pending; and, therefore, the tribunal found no ground for stay of the operation of the order against

and disposed of the appeal accordingly. The Appellants had also informed the Department vide their letter dated 08.03.2013, that on the basis of the Order-in-Appeal dated 30.11.2012, they had bifurcated the exports made under DEEC/Advance License Scheme from those exports made under other different schemes, and have deposited an amount of Rs.3,42,507/- along with interest of Rs.57,091/- attributable to DEEC/Advance Licenses. In adjudication of the SCN dated 01.04.2013, the Assistant Commissioner of Central Excise, Satara Division vide Order-in-Original dated 10.12.2013 had ordered for recovery of an amount of Rs.35,35,244/- from the appellants and also appropriated Rs.3,42,507/- and Rs.57,091/- already paid against the adjudged demands towards duty and interest, respectively. Feeling aggrieved with the aforesaid order dated 10.12.2013 passed by the original authority in ordering recovery of refund sanctioned earlier to the appellants and against the Order-in-Original dated 11.07.2014 rejecting the refund of Rs.3,42,507/- paid twice, first time while reversing the CENVAT credit while applying for refund in cash under Rule 5 ibid and second time vide their letter dated 08.03.2013 making voluntary payment. In disposing the two aforesaid orders of the original authority, by a common impugned order dated 06.01.2017, learned Commissioner (Appeals) allowed refund of amount of Rs.3,42,507/-, while upholding the order of the original authority dated 10.12.2013 in recovery of the refund amount of Rs.35,35,244/-. Feeling aggrieved with the impugned common order dated 06.01.2017 of the Commissioner (Appeals), the appellants have filed this appeal before the tribunal.

3.1 Learned Advocate appearing for the appellant submitted that Rule 5 ibid, does not provide any provision for denial of refund benefit, if the inputs were procured under the Advance License Scheme. She further submitted that since the exportation of the finished products was not disputed by the Department, denial of the benefit of refund provided under Rule 5 of CCR of 2004, will not sustain the judicial scrutiny. She has relied upon the decision of the Tribunal in the case of *Commissioner of Central Excise, Jaipur-II Vs. Bhilwara Spinners Ltd.* 2011 (269) E.L.T. 384 (Tri. - Del.) to state that in an identical set of facts, the Tribunal has considered the refund benefits in favour of the appellants. Thus, she prayed for allowing the appeal for grant of consequential refund as result of the refund application filed by the appellants under Rule 5 ibid read with transitional provisions under Section 142(3) of the CGST Act, 2017.

3.2 In support of their stand, learned Advocate relied upon the decisions of the Tribunal in the following case laws including the decision in the case of self-same appellants :

(i) *Commissioner of Central Excise, Jaipur-II Vs. Bhilwara Spinners Limited* – 2011 (269) E.L.T. 384 (Tri. – Del.)

(ii) *Commissioner of Central Excise, Jaipur-II Vs. Bhilwara Spinners Limited* – 2008 (226) E.L.T. 222 (Tri. – Del.)

(iii) *Bombay Dyeing & Manufacturing Company Limited Vs. Commissioner of Central Excise, Raigad* - 2015 (315) E.L.T. 312 (Tri. – Mumbai)

(iv) *Okasa Pharma Private Limited Vs. Commissioner of Central Goods & Service Tax- Kolhapur* – Final Order No. A/86153/2023 dated 18.07.2023.

On the above basis, the learned Advocate submitted that the appeal preferred by them may be allowed.

4. On the other hand, learned AR appearing for Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records of the case. I have examined the submissions advanced by the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department. Further, I have also perused the additional written submissions in the form of paper books submitted in this case.

6. The period involved in this appeal is January, 2011 to March, 2011.The relevant provisions for grant of refund under the CENVAT Credit Rules, 2004 is extracted herein below:-

> ***"Rule 5: Refund of CENVAT credit****.- Where any input or input service is used in the final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,*
>
> *(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or*
>
> *(ii) service tax on output service,*
>
> *and where for any reason such adjustment is not possible, the manufacturer pr the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:*

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilized for payment of service tax on any output service.

Explanation: For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of Services Rules, 2005."

7. On perusal of the above statutory provision, it transpires that the manufacturer of excisable goods is entitled for grant of refund of accumulated Cenvat Credit availed on the inputs, subject to fulfilment of the condition that the finished goods should have been exported. In the present case, since the Department has not specifically alleged that the appellant had not exported the finished goods, denial of benefit of refund on the ground that the inputs procured under the DEEC/Advance License Authorization Scheme will not be sustained, inasmuch as the CENVAT statute does not debar such availment of benefit by the exporter. In this regard, I find that, in an identical case, this Tribunal in the case of *Bhilwara Spinners* (supra) has dealt with the situation and allowed the refund benefit in favour of the assessee. The relevant paragraph in the said order is extracted herein below:-

"6. *From a reading of this Rule, it is clear that the only restrictions which have been imposed on cash refund of unutilised Cenvat Credit accumulated in respect of export of the goods without payment of duty under bond are that the draw back under the Customs and Central Excise Draw Back Rules, 1995 has not been claimed or rebate of duty under Central Excise Rules, 2002 in respect of the duty paid on the inputs used in the manufacture of the goods exported has not been claimed. There is no provision in this Rule that the cash refund of accumulated Cenvat credit would not be available if the exports have been made under Advance Licence. While it is true that cash refund under Rule 5 of Cenvat Credit Rules, 2004 of the accumulated Cenvat credit in respect of the inputs used in the manufacture of the goods exported under bond without payment of duty and the rebate vide Rule 18 of duty on the inputs used in the manufacture of goods exported, are equivalent, and the benefit of duty free imports under advance licensing scheme under notification No. 43/02-Cus. and 93/04-Cus. is available subject to condition that the facility of input duty rebate under Rule 18 or acquiring duty free inputs under Rule 19(2) of the Central Excise Rules, 2002 has not been availed, unless the condition of non-availment of advance licence benefit is mentioned in Rule 5 of the Cenvat Credit Rules, 2004, the same cannot be read*

into it. Moreover, when the exemption notifications Nos. 43/2002-Cus. or 93/2004-Cus. in respect of the duty free imports made against Advance Licence issued against the exports made under Advance Licence Scheme, mention that for the benefit of the exemption under these notifications, the export obligations in respect of the Advance Licence should be discharged by export of finished products without availing the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2002 and of these conditions are breached, as according to Department, facility of input duty rebate under Rule 18 of Central Excise Rules, 2002 is equivalent to cash refund of accumulated cenvat credit under Rule 5 of Cenvat Credit Rules, 2004, then it is the benefit of the duty exemption under these notifications in respect of the goods imported against the advance licence, which has to be denied, and not the benefit of cash refund under Rule 5 of the Cenvat Credit Rules, 2004 in respect of the exports."

8.1 I also find that in the case of *Bombay Dyeing & Manufacturing Company Limited* (supra), this Tribunal while examining the identical set of facts have held that there is no double benefit availed by the appellants and they are eligible to claim refund of CENVAT credit accumulated which remained unutilised on export of the finished goods under Rule 5 of the CENVAT Credit Rules, 2004. The relevant paragraphs of the said order is quoted below:

"12. *We find that till 1-4-1997 the Export Policy provisions were different and duty free imported materials against Advance Licence were freely transferable after fulfillment of export obligation, where the Modvat/Proforma credit facility or excise relief under Rule 191B of CER, 1944, were availed and hence, could have lead to possible double benefit. But after 1-4-1997 Foreign Trade Policy (FTP), the position have been changed and going through the provisions relevant for the impugned period it is clear that it would not be possible to get double benefit.*

16. *We further find that in the case of Bhilwara Spinners Ltd. (supra), this Tribunal observed as under :-*

"8. In view of the decision of the Tribunal in the case of Ispat Industries Limited (supra) refund claim under Rule 5 of Cenvat Credit Rules cannot be denied unless the assessee claimed drawback or rebate. The contention of the learned Authorized Representative (DR) that the respondent is getting the double benefit if the refund is allowed, not sustainable for the reason that in this case, respondents are getting the refund of the Excise duty which they paid on the raw material used in the manufacture of exported goods. Under the Advance Licence Scheme, the respondents are entitled to get the duty free material. The said duty free material may be replenished towards home consumption and set off is available to the respondent as Cenvat credit for payment of duty on final product which were ultimately cleared in home consumption with payment of duty. Therefore, I do not find any merit in the submission of the learned Authorized Representative (DR). So, there is no reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected."

In view of the above, it is clear that to claim refund under Rule 5 of Cenvat Credit Rules, 2004 on export of the finished goods, the credit is accumulated and the same cannot be utilised otherwise. We also find that as per the provisions of Foreign Trade Policy post 1997, no double benefit is available.

17. We further find that in the case of Motherson Sumi Electric Wire (supra), this Tribunal held that no one-to-one correlation was required between the inputs and exported goods. Therefore, appellants are entitled for such credit accumulated from time to time, which has been affirmed by the Hon'ble Karnataka High Court. We also find that while sanctioning the refund claim the Adjudicating Authority has examined the whole issue and recorded the finding as under :-

> *"The Adjudicating Authority allowed the refund claims holding that there was huge opening balance of unutilized credit of Rs. 50.51 crores in the Cenvat account; that there was accumulation of further credit of Rs. 11.34 crores, during the disputed two quarters; that out of the said balance credit, the assessee could utilize only Rs. 16.82 crores during the disputed quarters, leaving a balance unutilized credit of Rs. 45.03 crores; that the credit balance has never gone below the refund claimed, which itself evidences that the assessee was not in a position to utilize the Cenvat credit of the amount claimed as cash refund in the present case; that goods exported have been manufactured out of duty paid inputs, either imported or indigenous, and duty-free imported goods under advance authorization scheme, as replenishment materials, have not been used in the manufacture of goods exported; that the scheme of advance authorization under Para 4.1.5 of the FTP does not stipulate that imported goods must form part of exported goods and use of imported goods for manufacture of goods cleared in DTA, on payment of duty, is allowed; that advance authorization scheme under FTP does not cast any restriction on the use of local duty paid inputs in manufacture of the goods cleared for export and refund of Cenvat credit on inputs so used; that since the assessee is not manufacturing any exempt goods, the question of their taking double benefit does not arise; that against export clearance of about 22%, domestic clearance on payment of duty was approximately 78% and, hence, the claim that inputs imported duty free under advance authorization are utilized in the manufacture of dutiable goods cleared in DTA on payment of duty sounds reasonable; that although there is actual-user condition in advance authorization scheme, actual use of imported goods in goods exported is not required, based on Hon'ble Tribunal judgment in the case of Kitply Industries v. CCE - 2003 (156) E.L.T. 1021 (T) and ITC Ltd. v. CCE - 2003 (153) E.L.T. 366 (T); that one-to-one correlation of consumption of raw materials imported under DEEC scheme and goods exported is neither feasible nor warranted under Central Excise provisions; that even Board's Instruction F. No. 605/373/96-DBK, dated 16-1-1997 also clarifies that the term "raw materials required for use" does not mean that raw material must be physically incorporated; that judgments of Hon'ble Tribunal in Bhilwara Spinners - 2009 (90) RLT 614 (T) and U.K. Paints - 2004 (170) E.L.T. 280 (T), relied upon by the assessee would support their contention that duty free imports under Advance Licence does not take away the substantial benefits of refund under Rule 5 of CCR r/w Notn. No. 5/2006-C.E. (N.T.), dated 14-3-2006; that if the legislative intention was to deny DEEC benefit along with refund under Rule 5, it would have specifically mentioned in the Notification, as it has mentioned drawback and rebate; that advance authorization and corresponding Notn. No. 93/2004-Cus., dated 10-9-2004 does not put any restriction on refund of Cenvat credit under Rule 5 of CCR, although it prohibits export under Rule 18 & Rule 19(2) of CER; that cash refund of unutilized credit,*

> *under Rule 5 of CCR, is an export incentive to the exporters, which cannot be clubbed with advance authorization scheme; that the refund claim was filed within prescribed time limit and since it is refund of Cenvat Credit under Rule 5, it does not attract the bar of unjust enrichment, in view of provisions of Section 11B(2)(c) of CEA."*
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> ***18.*** *In view of the above discussion, we find that the appellant have not availed any double benefit in the light of the above cited decision and as per the Foreign Trade Policy, 2009-14 and are entitled to claim refund of Cenvat credit accumulated unutilised on export of the finished goods which appellant was not able to utilise otherwise under Rule 5 of Cenvat Credit Rules, 2004.*
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> ***19.*** *Therefore, we set aside the impugned order and allow the appeals with consequential relief, if any."*

8.2 Furthermore, I also find that in the case of self-same appellants in their former name M/s *Okasa Pharma Private Limited* Vs. *Commissioner of Central Goods & Service Tax, Kolhapur* vide Final Order No. A/86153/2023 dated 18.07.2023, on identical set of facts, this Tribunal have allowed the appeal in favour of the appellants by relying on the decision of the Tribunal in the case of *Bhilwara Spinners* (supra). Therefore, I find that the issue under dispute having been settled in a number of preceding cases and being no more open to dispute, I cannot take a different approach in order to decide the similar matter differently. As I am disposing the appeal on merits and on the factual matrix of the case, I am not recording any findings on other submissions made by both sides.

8.3 On the issue of refund of CENVAT credit under transitional provisions, upon introduction of GST regime, I find that the transitional arrangements have been provided under Section 142 of CGST Act, to enable the CENVAT credit, if refundable, to be paid in cash to the eligible persons, as there was no way that such excess CENVAT credit could be used by the assessee in payment of tax on output service or duty on final products. I also find that the proviso (c) to Section 11B(2) ibid, cannot be read to state that refund of such excess CENVAT credit has not been provided under Rule 5 of the CCR, 2004 as the entire arrangement of refund of excess CENVAT credit is arising as a transitional arrangement by moving from Excise duty/Service Tax regime to GST regime. As it could be seen that when the Central Excise Act, 1944 amongst other laws relating to old tax regime was repealed by Section 174 of the CGST Act, 2017 and that the CCR, 2004 is also being superseded vide Notification No.20/2017-C.E. (N.T.) dated 30.06.2017, by the Central Government for smooth implementation of transfer to GST regime in indirect taxation, it is not feasible to make a specific provision in CENVAT statute only to enable refund of excess CENVAT credit which could not be used by

the appellants as in the present case, for enabling cash refund of excess CENVAT credit relating to earlier regime while moving to the new GST regime.

8.4 Further, I also find merit in the argument of the learned Advocate for the appellants that they are eligible for refund of duty in cash under Section 11B(2)(d) ibid, inasmuch as the phrase 'duty of excise' used in Section 11B(2)(d) ibid refers to duties of excise leviable under Section 3 of the Central Excise Act, 1944 and it also includes CENVAT credit, which is nothing but such duty of excise paid on inputs or service tax paid on input services, which have been allowed for taking credit in terms of Rule 3 of the CCR. In view of the above discussions, I find that the appellants are eligible for refund of accumulated CENVAT credit arising on account of exports, and specifically allowed to be refunded in terms of Section 142(3) of the CGST Act, 2017.

8.5 Further, I have also gone through the various case laws on the subject, and I find that the Hon'ble Bombay High Court had an occasion to examine the issue of refund of CENVAT credit in a similar matter before them, in the case of *Combitic Global Caplet Pvt. Ltd. Vs. Union of India* in Writ Petition No.729 of 2021 with W.P. No.1228 of 2021, and being jurisdictionally binding on this Regional Bench of the Tribunal, I would like to be guided by such judgement. In the judgement delivered on 10.06.2024, the Hon'ble Bombay High Court have held that Sub-section (3) of Section 142 of the CGST Act very clearly says any amount eventually accruing shall be paid in cash and directed the departmental authorities/ sanctioning authority for refunding the amount of duty refundable to the petitioner in cash instead of credit in CENVAT account. The relevant paragraphs of the said judgement of the Hon'ble Bombay High Court are extracted and given below:

> *"8. It is these orders which are impugned in this petition and the stand taken by petitioner is that Section 142(3) of the Central Goods And Services Tax Act 2017 (the Act) clearly says, w.e.f. 1st July 2017, in view of the effect of change in the regime, i.e., when the GST regime was introduced, any refund that was payable to petitioner has to be paid in cash. Mr. Sridharan submitted that since the CENVAT regime has come to an end, credit of amount payable to petitioner to the CENVAT account would make no sense because petitioner will not get the money or credit thereof under the GST regime. Mr. Sridharan states since the government cannot retain any amount which is not due to it, the amount so collected is allowed to be paid over in cash as provided in sub Section (3) of Section 142 of the Act.*
>
> *xxx xxx xxx xxx*

10. Section 142(3) of the Act reads as under:

> *"142:- Miscellaneous transitional provisions :-*
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> *(1)* **********
>
> *(2)**********
>
> *(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944): Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse: Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.* **********"

11. In our view, Section 142(3) of the Act is very clear in as much as, it says " every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law …….. and any amount eventually accruing …….. shall be paid in cash ……". It is very widely worded in as much as it uses the expression "CENVAT credit" and also "any other amount paid". Even if, we take it that petitioner has made voluntary deposit, that amount has to be shown as CENVAT credit in the account of petitioner. In the alternative, it would certainly come under the category "or any other amount paid". Therefore, either way the amount paid by petitioner, admittedly, has to be refunded. In fact, it is also admitted that an amount of Rs.10,48,11,737/- is refundable to petitioner.

The credit of refund is the only issue because Mr. Adik, as an officer of this court and in fairness, agreed that Government cannot retain any amount without any authority of law.

12. Sub-Section (3) of Section 142 of the Act very clearly says "any amount eventually accruing shall be paid in cash". In the circumstances, we are of the opinion that respondents ought to have directed the sanctioning authority to refund the amount of duty refundable to petitioner in cash instead of credit in CENVAT account, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

13. Therefore, Rule made absolute in terms of prayer clauses (a) and (b) of both petitions, which are quoted above.

14. The amount shall be paid together with accumulated interest in accordance with law within four weeks of this order being uploaded."

9. In view of the foregoing, I hold that the impugned order is liable to be set aside to the extent it had denied the refund of CENVAT Credit under Rule 5 of the CENVAT Credit Rules, 2004 for a total amount of Rs.35,35,244/- on the basis of the discussions in paragraphs 7 to 8.2 above.

10. In the result, the impugned order dated 06.01.2017 passed by the learned Commissioner (Appeals) is set aside, by allowing the appeal in favour of the appellants.

(Operative portion of the Order pronounced in the Open Court)

(M.M. Parthiban)
Member (Technical)

Sinha