CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86399 of 2017

[Arising out of Order-in-Appeal No. PK/ST-I/MUM/192/2016-17 dated 24.03.2017 passed by the Commissioner of Service Tax (Appeals)-I, Mumbai.]

M/s. Uniphos International Limited ....Appellant
(Formerly known as "Uniphos Agro Industries Ltd.")
4th Floor, Readymoney Terrace, 167,
Dr. AB Road, Worli, Mumbai – 400 018

VERSUS

Commissioner of CGST, Mumbai Central ....Respondent
10th Floor, Lotus Infotech Building,
Near Parel Station, Mumbai – 400 012

APPERANCE:

Shri Kshitij Kasi, Advocate for the Appellant
Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85020/2026

Date of Hearing: 07.01.2026
Date of Decision: 07.01.2026

This appeal has been filed against rejection of refund order passed by the Commissioner (Appeals) at the instance of the Respondent herein for an amount of ₹68,453/- sanctioned earlier by the Refund Sanctioning Authority to the Assessee.

2. Before argument is led by the parties, learned Authorised Representative Mr. Sinha raised a point that value of appeal being less than of ₹2,00,000/-, Tribunal in exercise of Section 35B(1) second proviso of the Central Excise Act, equally applicable to Service Tax

matters in view of operation of Section 86(7) of the Finance Act, 1994 should refuse to admit the appeal for hearing since no special reason is cited or request is made for such hearing showing legal or factual necessity, when pendency of appeals involving high value is mounting up.

2.1 Learned Counsel for the Appellant Mr. Kshitij Kasi, with reference to decision of this Tribunal passed in the case of *Asiatic Enterprises Vs. Commissioner of Central Excise & Customs, Bhubaneswar-II*, reported in 2006 (9) TMI 260 – CESTAT, Kolkata that has been followed subsequently in the case of *Indoworth (India) Ltd. Vs. Commissioner of Central Excise, Nagpur, reported in 2012 (25) STR 98 (Tri.-Mumbai)* argued that there is clear findings of this Tribunal on this issue that second proviso to Section 35B of the Central Excise Act, 1944 can't be pressed into service under the Finance Act, 1994 since Section 86(7) of the Finance Act, 1994 relates to provision contained in Section 35C of the Central Excise Act and not under Section 35B of the said Act.

3. In the above noted premises, before given a finding on the applicability of such a statutory provision of Central Excise Act to the Finance Act, 1994, it would be worthwhile to reproduce the content of para 5 of the order passed in *Asiatic Enterprises, cited supra* that had analysed both the provisions after putting a comparative note in a tabular form on both Section 35B of the Central Excise Act, Section 35C of the Central Excise Act dealing with provisions relating to "appeals to the Appellate Tribunal" and provisions relating to "orders of the Appellate Tribunal" that is being compared with Section 86 of the Finance Act, 1994 dealing with provisions relating to "appeals to Appellate Tribunal". The said paragraph reads:

> *"5. The comparative study of the above-referred provisions of both the Acts reveal that Sub-Section (7) of Section 86 is limited in respect of exercizing power by the Appellate Tribunal <u>in hearing the appeals and making Orders under the Central Excise Act, 1944 and not in respect of admission of appeal.</u>*

> *The Appellate Tribunal acquires powers to hear the appeals and make Orders under Section 35C of the Central Excise Act, 1944 and not under Section 35B of the said Act. The discretion vested with the Appellate Tribunal to refuse or admit an appeal where the value of the appeal is below Rs.50,000.00/- (Rupees fifty thousand) under the second proviso to Section 35B(1) of the Central Excise Act, 1944, is not available to the Appellate Tribunal under Section 86(7) of the Finance Act, 1994 or any other provision of the said Act for refusing or admitting an appeal. No separate provision under the Finance Act, 1994 is incorporated for hearing appeals and making Orders by the Appellate Tribunal, as provided under Section 35C of the Central Excise Act, 1944. It is seen that Section 86(7) similar to the provisions of Section 35C of the Central Excise Act, 1944 and not Section 35B, as such, the second proviso to Section 35B cannot be pressed into service under the Finance Act, 1994. This means that an appeal lie before the Appellate Tribunal by an aggrieved assessee against the Orders passed under Sections 73, 83A, 84, 85 of the Service Tax Rules 1994, irrespective of the valuation. Apart from the above, there appears to be substantial question of law involved in the present appeal and furthermore, this Tribunal had entertained two more appeals of the same appellants, though the value therein, much below Rs. 50,000.00/- (Rupees fifty thousand)."*
>
> *(Underlined to emphasise)*

Before entering into comparative analysis of the provisions as noted above, it is required to be brought on record that appeal provisions and disposals in Excise matters are bifurcated through two different sub-Sections namely Section 35B and Section 35C while in Service Tax matters appeal provisions are incorporated in Section 86 of the Finance Act and its entire disposal including hearing of appeal and making orders under this Section means under Section 86 are directed to be governed under the provision contained in Section 35B of the Central Excise Act through Section 86 sub-Section 7 that reads:

> *"Subject to provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944."*
>
> *(Underlined to emphasise)*

The comparative analysis of both the provisions of Central Excise Act and Finance Act would go to show that Section 35B of the Central Excise Act and Section 86 of the Finance Act, 1994 are *pari materia* except sub-Section 1A dealing with transfer of pending matters to the Central Government, while Section 35C deals with hearing of the appeal, making orders, granting adjournment, making rectification of order, etc. and going by sub-Section 7 of Section 86 of the Finance Act, 1994, it can be stated without hesitation that for hearing of appeals as well as for making orders under Section 86 of the Finance Act - that even includes admission of appeal filed belatedly (sub-Section 5 of Section 86) which is coterminous to provision contained under Section 35B(5). Therefore, it could be considered as an erroneous interpretation of the provision contained in 2nd proviso to say that Appellate Tribunal acquires power to hear the appeal and make orders under Section 35C of the Central Excise Act, 1944 and not under Section 35B of the said Act, as noted in para 5 of the relied upon decision namely *Asiatic Enterprises, cited supra.*

4. Appeal provisions when expressly provided in the statute are indefeasible rights of the aggrieved parties to prefer appeal on which no hearing is required to take place for admission but when it is not a statutory right but dependent on the discretion of the Appellate Authority before whom it is presented, 'hearing on the admission' of appeal on merit has to take place in an adversarial judicial system including in Writ appeals or Writ of any nature which are preferred before the Constitutional Courts namely before the Hon'ble High Courts and Hon'ble Supreme Court. In this Tribunal such a right to file appeal for the value of less than of ₹2,00,000/-, though not

debarred through statutory provision, they remain discretionary concerning its admission for hearing of appeal which the Registry of the Tribunal is not empowered to do under the statute and therefore, there is a requirement of hearing of the said appeal at the admission stage to justify its continuance and such hearing for making orders under Section 186 of the Finance Act, 1994 has to follow the procedure enumerated under Section 35B and 35C of the Central Excise Act, since sub-Section 7 to Section 186 of the Finance Act, 1994 dictates to follow the same procedure as the Tribunal exercises and follows in hearing appeals and making orders under the Central Excise Act, 1944.

5. I am, therefore, of the considered view that interim decision in *Asiatic Enterprises, cited supra* is distinguishable and therefore, there is no requirement to refer the matter to the Hon'ble President of the Tribunal for a Larger Bench opinion as such an interim order passed in continuation of the appeal can't be taken as binding precedent, apart from the fact that in the said *Asiatic Enterprises, cited supra* justification for continuation of appeal is available in the last line of paragraph 5 that goes to show that substantial question of law was involved in that appeal and Tribunal had already entertained Appellant's other two appeals on similar premises, which points are found unavailable in the appeal at hand. Therefore, in exercise of the discretionary power that is vested on the Tribunal apparently for the purpose of minimising appeals of low value, the present appeal is not accepted for hearing. Consequently, it is dismissed at the admission stage on monetary ground as admission is refused.

(Dictated & pronounced in open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad