**(2012) 04 SC CK 0010**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 1414 of 2008 with CA. No''s. 6675 of 2008 and 4744 of 2009

Advance Surfactants India Ltd. — APPELLANT

Vs

Chief Commissioner of C. Ex. — RESPONDENT

**Date of Decision :** 13-04-2012

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 35L

**Citation :** (2013) 287 ELT 241

**Hon'ble Judges :** D.K. Jain, J;Anil R. Dave, J

**Bench :** Division Bench

**Advocate :** Lakshmikumaran, for the Appellant; Harish Chandra, for the Respondent

**Final Decision :** Allowed

# Judgement

1. Applications for amendment of cause title is allowed in terms of prayer (a). Cause title has been amended accordingly.

2. These appeals by the Assessee, u/s 35L of the Central Excise Act, 1944, are directed against three separate orders passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi [for short ''the Tribunal''] in Excise Appeal Nos. 2248/2004 [2006 (206) E.L.T. 311 (Tri. -Del.)], 4609/2004 and 571/2008. By the impugned orders, the Tribunal has allowed the appeals preferred by the Revenue against the orders passed by the Commissioner (Appeals).

3. Since a common question of law is raised in these appeals, with the consent of Learned Counsel appearing for the parties, all the appeals are being disposed of by this common order at this stage itself.

4. In view of the order, we propose to pass after hearing the Learned Counsel, we deem it unnecessary to narrate the facts, giving rise to the appeals in detail. It would suffice to note that the question of law raised in these appeals relates to

 

the determination of the cost of raw material in the assessable value of the final product for the purpose of levy of Excise duty.

5. At the very outset, it is urged by Mr. Lakshmikumaran, Learned Counsel appearing on behalf of the Appellants that the main order dated 31st May, 2006, passed by the Tribunal was an ex parte order [2006 (206) E.L.T. 311 (Tribunal)]. The application filed on behalf of the Assessee for recall of the said order was dismissed by the Tribunal by a cryptic order dated 21st September, 2007. It is argued that the Appellant had made out a very strong case for recall of order dated 31st May, 2006 but the Tribunal without adverting to the cause shown for non-appearance of the counsel, dismissed the application on the ground that the Appellant did not have a strong case on merits. Learned Counsel thus, asserts that the Appellant did not get an adequate opportunity of hearing before the Tribunal with the result that certain vital legal and factual issues could not be brought to the notice of the Tribunal for adjudication, and therefore, the cases deserve to be remanded back to the Tribunal for fresh consideration on merits.

6. Mr. Harish Chandra, learned senior counsel appearing on behalf of the Revenue, on the other hand, submits that since the main issue arising in these appeals has been dealt with by the Tribunal, in the light of the decision of this Court in Ujagar Prints v. Union of India and Ors. -1988 (38) E.L.T. 535, no useful purpose would be served by remanding the case back to the Tribunal.

7. We have bestowed our anxious consideration to the entire matter. Regard being had to the grounds urged in these appeals, in particular, the question of invocation of extended period of limitation, we are convinced that in the interest of justice, it is a fit case where the Appellant deserves to be granted adequate opportunity to place before the Tribunal its view point on all the aspects of their case.

8. Resultantly, the appeals are allowed, the impugned orders are set aside and the matters are remitted back to the Tribunal for fresh adjudication on all the issues that had been raised before it in accordance with law. It goes without saying that both the sides would be free to urge all the grounds before the Tribunal as may be available to them in law.

9. The appeals stand disposed of in the above terms with no order as to costs.

 