(2014) 07 BOM CK 0040

In the Bombay High Court

Case No : Central Excise Appeal Nos. 101 to 103 of 2012 and Central Excise Appeal (Lodging) Nos. 68 and 69 of 2012

Commissioner of Central Excise APPELLANT

Vs

Cipla Ltd. RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Citation : (2014) 48 GST 56

Hon'ble Judges : S.C. Dharmadhikari, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : Vijay Kantharia and N.V. Kalantri, Advocate for the Appellant; V. Sridharan, Sr. Advocate and Jas Sanghavi, Advocate for the Respondent

Judgement

1. There are two Appeals on our Board together with the Central Excise Appeal Nos. 101/2012, 102/2012 and 103/2012. These two Appeals, namely, Central Excise Appeal (lodging) Nos. 68/2012 and 69/2012 have not been registered and numbered because the Revenue, according to the Registry, has not removed the office objections. We find from a perusal of the paper books that some of the office objections were capable of being waived and when the common order is under challenge. The remaining office objections, if any, shall be duly removed is the assurance given on behalf of the Revenue by Mr. Kantharia. On such assurance we set aside the Registry''s order of rejection of Appeals and direct that same be registered and numbered. In any event both sides agree that they shall be taken up today along with other Appeals and dispose of by the common order as similar point is involved therein.

2. We have extensively heard Mr. Kantharia, learned counsel appearing for the Revenue in support of these Appeals, on the earlier occasion. We have also heard Mr. Sridharan, learned Senior Counsel appearing for the Assessee.

3. Upon perusal of the order under challenge we find that entertaining the Appeals and keeping them pending would serve no purpose essentially because the finding of the Tribunal is that none of the manufacturers/suppliers have

claimed the refund of duty/reversal of credit. In these circumstances and when their identity is common with that of the Respondent/Assessee that we find that by keeping the larger issue and question open for being decided in an appropriate case these Appeals can be disposed of on such finding of fact.

4. When we were so inclined to dispose of the Appeals, Mr. Kantharia submits that such stand may have been taken by the manufacturers/suppliers during the course of argument before the Tribunal, but the Tribunal has adjudicated the matter on merits, therefore, it would not suffice that this Court should dispose of the matters by restricting its finding on the aspect noted above.

5. In these circumstances we called upon Mr. Prakash Shah, who appeared earlier for the Assessee, as to whether the Respondents/Suppliers would file an affidavit-cum-undertaking that they would not claim any refund of duty which was paid by them. Accordingly, the matter was adjourned. The Respondents have filed the affidavit-cum-undertaking dated 30.06.2014 stating therein that they shall not claim the refund of duty which was paid by the Respondent at the factory at Bangalore and Kurkumbh (supplier factories) in respect of the goods cleared to their factories at (i) Kurkumbh, Pune, (ii) Vikhroli, Mumbai, (iii) Patalganga, Raigad, (iv) Verna, Goa and (v) Bangalore in the State of Karnataka (recipient factories). It is submitted that the Respondent/recipient factories have taken the credit of duty paid by the said two factories at Bangalore and Kurkumbh. In these circumstances and when the corporate identity of these suppliers/manufacturers is common to the present Respondent/Assessee that we take this affidavit-cum-undertaking on record and mark it as "X" for identification. We accept each of the statements made in paragraph 2 of this affidavit as undertakings given to this Court. Once we find that there is additional protection of interest of the Revenue by the undertakings and which we have accepted, then, all the more this is not a fit case for entertaining the Appeals. In the light of the clear findings of fact and which stand supported by the statements made and the undertakings given to this Court that the Appeals are disposed of. They do not raise any substantial question of law. We clarify that the view taken by us is in the facts peculiar to the Assessee and shall not bind the Revenue in other cases. In the event the Tribunal adopts the reasonings of the present case in some other case, then, it would be open for the Revenue to challenge the same. All contentions of both sides in that regard are kept open. The Appeals are, accordingly, disposed of. No costs.