

GAHC010083942019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : C.Ex.App. 10/2019

1:THE COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND
CENTRAL EXCISE
MILAN NAGAR, LANE-F, P.O. C.R. BUILDING, DIBRUGARH- 786003.

VERSUS

1:M/S. PAN PARAG INDIA LTD.,
KOTHARI PRODUCT LTD., 24/19, THE MALL, KANPUR, UTTAR PRADESH-
208001.

Advocate for the Petitioner : SC, CENTRAL EXCISE CUSTOMS

Advocate for the Respondent : DR. A SARAF

BEFORE

HON'BLE THE CHIEF JUSTICE (ACTING) MR. ARUP KUMAR GOSWAMI

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.10.2019

[A.K. Goswami, CJ(Acting)]

Heard Mr. B. Sarma, learned standing counsel, Central Excise and Service Tax, appearing for the appellant. Also heard Dr. A. Saraf, learned Senior counsel assisted by Mr. S.K. Kejriwal, appearing for the respondent.

On an earlier occasion, Dr. Saraf had made a submission that this appeal will not lie before this Court under Section 35G of the Central Excise Act, 1944, but will lie before the Hon'ble Supreme Court in terms of Section 35L. However, today Dr. Saraf has fairly submitted that subsequently he had come

across a judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs, Bangalore-I Vs. M/s Motorola India Limited, in Civil Appeal No.10083/2011, decided on 05.09.2019 which lays down that an appeal of the present nature will lie before the High Court and therefore, he will not be urging that this appeal is not maintainable.

Mr. Sarma has drawn the attention of the Court to the substantial questions framed by him.

Dr. Saraf contests the same and contends that the same are not substantial questions of law in view of pronouncement of the Hon'ble Supreme Court in the case of Bajaj Auto Limited Vs. Union of India and others (in Civil Appeal No.3239/2019, decided on 27.03.2019) and retrospective amendment of Notification No.32/99-CE dated 08.07.1999 in terms of Section 153 of the Finance Act, 2003.

After hearing the learned counsel for the parties, we admit the appeal on the following 2(two) substantial questions of law:-

- (i) *Whether the CESTAT, Kolkata, committed error of law in holding that the assessee is eligible to get refund of additional duties of excise on Pan Masala in terms of Notification No.32/99-CE dated 08.07.1999?*
- (ii) *Whether the finding of the CESTAT that no irregularities were committed by the assessee while debiting the amount on account of retrospective amendment of Notification No.32/99-CE dated 08.07.1999 vide Section 153 of the Finance Act, 2003 through Cenvat credit account is justified?*

No formal steps are called for as the respondent is duly represented.

List the appeal for hearing in the next Part-II hearing list.

Sd/-
JUDGE

Sd/-
CHIEF JUSTICE (ACTING)

Comparing Assistant