

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No(s).3896-3898/2009

WITH

CIVIL APPEAL Nos. 3887-3889/2009

COMMISSIONER OF CENTRAL EXCISE, INDORE

Appellant(s)

VERSUS

M/S. RAYMOND LTD. THR. ITS DIRECTOR

Respondent(s)

O R D E R

1. The Order challenged in these appeals, filed under Section 35 L of the Central Excise and Sales Tax Act, dated 8th April, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai has been rectified by a subsequent order dated 20.6.2005. By an amendment to the Memorandum of Appeal, the said order has also been impugned. In the light of the aforesaid subsequent developments, it is the validity of the order dated 20.6.2005 that would require consideration in the present appeal filed by the appellant.

2. We have heard the learned counsels for the parties. The original order dated 8th April, 2005 of the learned Tribunal was substantially in favour of the Revenue except that the penalty imposed was reduced. It is the aforesaid

reduction of penalty that was initially challenged by the Revenue. However, while considering the rectification application, the learned Tribunal corrected what it perceived to be an apparent error of law and went on to hold that the proceedings initiated under Section 11 A of the Act within a period of six months from the relevant date alone would be competent in law. In other words, the application of the proviso to Section 11 A was expressly negated by the learned Tribunal and the demand raised on the basis of such extended period was held to be time barred.

3. The conclusion of the Tribunal to the aforesaid effect in the order dated 20.6.2005 proceeds on the basis that the sales policy and the sales agreement which form the main plank for the demand(s) raised, by disallowing the claims of deduction made by the assessee, were known to the department in the year 1997 itself. Yet, the demands or substantial part thereof were not raised within the "normal" period of six months but were so raised within the "extended" period of five years. Not only the aforesaid finding is a pure finding of fact, which conclusion of the learned Tribunal is duly supported by adequate reasons, we do not find any error on a substantial question of law to have been committed by the learned Tribunal. As already observed, the demand raised on the assessee was primarily founded on the sales practices contained in the sales policy and sales agreement. Benefits of deduction passed on to the buyer under the sales policy and sales agreement have not

been allowed to the assessee. However, insofar as the issue of limitation is concerned, as the materials on the basis of which the claims/demands have been raised were before the Revenue at all material points of time, no question of suppression or mis-statement can legitimately arise to enable the Revenue to avail the benefit of extended period of limitation.

4. We, therefore, decline to interfere with the order dated 8th April, 2005 passed by the learned Tribunal and accordingly, dismiss the appeal.

.....J.
(RANJAN GOGOI)

.....J.
(NAVIN SINHA)

New Delhi;
September 6, 2017

ITEM NO.102

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3896-3898/2009

COMMISSIONER OF CENTRAL EXCISE, INDORE

Appellant(s)

VERSUS

M/S. RAYMOND LTD. THR. ITS DIRECTOR

Respondent(s)

WITH

C.A. No. 3887-3889/2009 (IX)

Date : 06-09-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. P.S. Narsimha, ASG.
 Mr. K. Radhakrishnan, Sr. Adv.
 Mr. Rupesh Kumar, Adv.
 Mr. Arijit Prasad, Adv.
 Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. V. Lakshmikumaran, Adv.
 Mr. Jay Savla, AOR
 Mr. Karan Sachdev, Adv.
 Ms. Renuka Sahu, Adv.
 Mr. Aditya Bhattacharye, Adv.
 Mr. Prabhat Chaurasia, Adv.
 Mr. Jasdeep Singh Dhillon, Adv.
 Mr. L. Badri Narayanan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeals are dismissed in terms of the signed
order.

(B.PARVATHI)
COURT MASTER (SH)

(ASHA SONI)
BRANCH OFFICER

(Signed order is placed on the file)