

(2023) 06 CESTAT CK 0026

Customs, Excise And Service Tax Appellate, Ahmedabad

Case No: Service Tax Appeal No. 11813 Of 2013

Commissioner Of
Central Excise & ST,
Ahmedabad

APPELLANT

Vs

Patel Inn And Travel
Pvt Limited

RESPONDENT

Date of Decision: June 15, 2023

Acts Referred:

- Central Excise Act, 1944 - Section 35A
- Customs Act, 1962 - Section 128A(3)

Hon'ble Judges: Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench: Division Bench

Advocate: Tara Prakash, S.J. Vyas

Final Decision: Dismissed

Judgement

Ramesh Nair, Member (J)

1. This Revenue's appeal is against the order-in-appeal dated 13.02.2013 whereby the matter was remanded to the Adjudicating Authority by

learned Commissioner (Appeals). The grievance of the Revenue is that the Commissioner (Appeals) had no power to remand the matter whereas he

is supposed to pass the final order therefore, the order is not legal and proper.

2. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of appeal.

3. Shri S.J. Vyas, learned Counsel appearing on behalf of the Respondent submits that as per various judgments passed by this Tribunal relying on the

Honâ€™ble Supreme Court judgment in the case of MIL India Ltd vs. CCE, Noida â€" 2007 (3) TMI 8 Supreme Court held that the Commissioner

has power to remand the matter therefore, the order remanding to the Adjudicating Authority deserve to be upheld. He placed reliance on the

following judgments:-

(a) CST, Ahmedabad vs. Torrent Pharmaceuticals Limited â€" 2023 (3) TMI 1127-CESTAT AHMEDABAD

(b) CST vs. Associated Hotels Limited â€" 2014 (4) TMI 406 â€" GUJARAT HIGH COURT

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that this issue has come up time and again before

this Tribunal and this Tribunal has taken a consistent view in view of the Honâ€™ble Supreme Court judgment in the case of MIL India Limited

(supra) and Honâ€™ble Gujarat High Court judgment in the case of Associated Hotels Limited (supra) whereby it was held that Commissioner

(Appeals) has indeed power to remand the matter to the Adjudicating Authority. Recently, this Tribunal in the case of CST, Ahmedabad vs. Torrent

Pharmaceuticals Limited (supra) dealing with the same issue passed the following order:-

â€œThe issue involved in the Revenueâ€™s Appeal is that whether the Commissioner (Appeals) has the power to remand the matter to Adjudicating

Authority.

2. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that per

the Section 35A of Central Excise Act, 1944 / Section 128 A (3) of the Customs Act, 1962 with effect from the 11.05.2001 after amendment in the

said section the Commissioner (Appeals) has no power to remand the matter to the Adjudicating Authority. Therefore, he erred in remanding the

matter to the Adjudicating Authority.

3. Shri Jigar Shah, learned Counsel appearing on behalf of the Respondent submits that the issue is no longer res-integra as held by the Jurisdiction

High Court in the case of Associated Hotels Limited- 2015 (37)STR 723 (Guj.), which was followed by this Tribunal in Final Order No. A/10860 -

10864/2020 dated 18.03.2020 in the case CCE vs. Adani Power Limited that the Commissioner (Appeals) indeed has power to remand the matter to

the Adjudicating Authority. Therefore, the Revenue's appeal is not maintainable.

4. We have carefully considered the submission made by both sides and perused the records. As per the judgment of the Hon'ble Jurisdiction

High Court of Gujarat in the case of Associated Hotels Limited (Supra) in which the support was taken from the Hon'ble Supreme Court

Judgment in the case of Mil India Limited vs. CCE, Noida- 2007 (210) ELT 188 (SC). On this settled position this Tribunal in the case of CCE vs.

Adani Power Limited case vide Final order No. A/10860 -10864/2020 dated 18.03.2020 dealing with one of the issue of remanding power of the

Commissioner (Appeals) held as under:-

“6. As regards the issue that whether Commissioner (Appeals) has power to remand the matter to Adjudicating Authority, we find that this

being a case of refund of service tax, clearly covered by the ratio of Hon'ble Gujarat High Court judgment in the case of Associated Hotels

Limited (supra). In the said judgment, the Hon'ble High Court has also referred to the judgments of Hon'ble Supreme Court in the case of Mil

India Limited vs. CCE, Noida - 2007 (210) ELT 188 (SC). Therefore, we are of the view that the learned Commissioner (Appeals) has power to

remand the matter to the Adjudicating Authority, therefore, on this count also, Revenue's appeal does not sustain.

7. In view of the above judgment of this Tribunal, the Revenue's appeals are not sustainable. Hence, we uphold the impugned orders.”

5. In view of the above decision given by taking support of Hon'ble Gujarat High Court in the case of Associated Hotel Limited (Supra) and

Hon'ble Supreme Court Judgment in the case of Mil India Limited (Supra), the Commissioner (Appeals) has indeed power to remand the matter.

Accordingly, there is no error in the impugned order to the extent the matter was remanded to the Adjudicating Authority.

Accordingly, the Revenue's appeal is not maintainable and the same is dismissed.”

5. In view of the above judgment, it is settled that the Commissioner (Appeals) has power to remand the matter to Adjudicating Authority.

Accordingly, we do not find any error in the order of the Commissioner