

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 12603 of 2013- DB

(Arising out of OIA-83/2013/AHD-III/SKS/COMMR-A/AHD dated 01/05/2013 passed by Commissioner of Central Excise-AHMEDABAD-III)

C.C.E. & S.T.-Ahmedabad-iii

Custom House... 2nd Floor,
Opp. Old Gujarat High Court,
Navrangpura, Ahmedabad, Gujarat - 380009

.....Appellant

VERSUS

Indian Oil Corporation Ltd

loc Top,
Taluka: Sidhpur, Sujapur,
State Highway, Sidhpur, Patan, Gujarat

.....Respondent

APPEARANCE:

Shri Prabhat K Rameshwaram, Additional Commissioner (AR)for the Appellant
None appeared for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR**

Final Order No. A/ 11303 /2023

DATE OF HEARING: 23.02.2023
DATE OF DECISION: 21.06.2023

RAMESH NAIR

This appeal is directed against Order-in-Appeal passed by Commissioner (Appeals) whereby the Learned Commissioner (Appeals) remanded the matter to the adjudicating authority to examine the documents on the issue of unjust enrichment and to decide refund matter a fresh. In present appeal revenue has raised the only ground that Commissioner (Appeals) has no power to remand the matter and he should have decided the appeal before him finally.

2. When the matter was called out none appeared on behalf of the Respondent. However, the Respondent sought for an adjournment on the ground that on the identical issue the Revenue's appeal is pending before the Hon'ble Supreme Court. We do not find any substance in the reason

mentioned in the adjournment letter. Since the present matter is not on the merit of the case but only on the power of remand of the Commissioner (Appeals), therefore, we are of the view the appeal can be disposed of.

3. Shri Prabhat K Rameshwaram, Learned Additional Commissioner (AR) appearing for the Revenue reiterates the grounds of appeal.

4. We have carefully considered the submission made by Learned AR and perused the record. We find that the limited issue raised by the revenue in their grounds of appeal is that the Commissioner (Appeals) instead of remanding the matter should have decided finally as he has no power to remand the matter. We find that firstly, the Learned Commissioner (Appeals) has rightly remanded the appeal on the facts that the lower authority has not appreciated the documentary evidence with regard to unjust enrichment which needs to be re-considered by the Adjudicating Authority. As regard the issue that whether the Learned Commissioner (Appeals) has power to remand the matter, this issue is no longer res-integra in the light of following judgments :-

- Commissioner of Central Excise, Ahmedabad-I Vs. Medico Labs.-2004 (173) E.L.T. 117 (Guj.)
- Commissioner of C. Ex. & Cus., Bbsr- II Vs. Indian Aluminium Co. Ltd. 2002 (144) E.L.T. 97 (Tri. – Kolkata)
- Union of India Vs. Umesh Dhaimode – 1998 (98) E.L.T. 584 (S.C.)

4.1 In view of the above judgements, it is settled that Commissioner (Appeals) has indeed power to remand the matter to Adjudicating Authority to decide afresh. Moreover, by remanding the matter to the Adjudicating Authority there is nothing prejudicial to the Revenue. For this reason also there is no merit in the revenue's appeal.

5. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed. The Adjudicating Authority now should expeditiously pass de-novo adjudicating order in the terms of the impugned order.

(Pronounced in the open court on 21.06.2023)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**C.L.MAHAR
MEMBER (TECHNICAL)**

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