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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No. 693/2009**

Reserved on: 11th November 2017
Decided on: 7th December, 2017

COMMISSIONER OF INCOME TAX, DELHI ....Appellant
Through: Mr. Mr. Rahul Chaudhary and Mr. Sanjay Kumar, Advocates.

versus

M/S. MARUTI UDYOG LTD. ..... Respondent
Through : Mr. S. Ganesh, Senior Advocate with Ms. Kavita Jha, Mr. S. Sukumaran, Mr. Anand Sukumar, Mr. Bhuwan Dhoopar, Ms. Roopali Gupta and Mr. Bhupesh Pathak, Advocates.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

JUDGMENT

% 07.11.2017

Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the impugned order dated 31st October 2008 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.993/Del/2007 for the AY 1999-00.

2. **Admit**.

3. The following questions of law are framed for consideration:

(i) Whether the ITAT erred in holding that the Assessing Officer (AO) was not justified in making addition of Rs 643.34 crore on account of excessive consumption of raw material and inputs?

(ii) Whether the ITAT after holding that closing stock values in RG-23 Part-II register under Excise Act being relevant could ignore the same in spite of admitted discrepancy with Physical stock to the tune of Rs 643.34 crores?

(iii) Whether the ITAT erred in limiting itself to the direction in Para 127 of remand order without considering that the said order had to be considered in totality?

(iv) Whether the ITAT erred in only considering the directions as stated in para 127 without considering the background of said order in which same was passed or in isolation of the ITAT order in the earlier remand order?

(v) Whether the IT AT is right in holding that Rs 31,79,98,407/- on account of duty drawback had not accrued and become payable to the Assessee and cannot be included in the taxable income for the AY 1999-00?

4. In the judgment rendered today in ITA 31 of 2005 this Court has in relation to the impugned order dated 31st October 2008 of the ITAT observed as under:

> "66. At this stage, it requires to be noticed that pursuant to the remand order by the ITAT, the matter again went before the AO who reiterated the earlier order. The CIT (A) also dismissed the Assessee's appeal. When the matter went before the ITAT, by an order dated 31st October 2008 it allowed the Assessee's appeal on the reasoning that the AO had exceeded his jurisdiction in undertaking the exercise of determining the actual consumption of raw materials and inputs. According to the ITAT, all that the ITAT had done in the earlier round (i.e. in the order dated 11th October 2004 impugned in the present appeal) was to ask the AO to give 'appeal effect' to the order

of the ITAT. As a result of the orders of the AO and CIT (A) were set aside and the appeal was decided in favour of the Assessee. Against the said order of the ITAT, the Revenue has come in appeal before this Court in ITA No. 693 of 2009.

67. While a separate order is being passed in the said appeal, it requires to be noticed at this stage that the said order dated 31st October 2008 of the ITAT in fact misunderstood the scope of its earlier remand order dated 11th October 2004. Further the ITAT erred in declining to examine the matter only because its earlier order dated 11th October 2004 was pending in appeal before this Court. This despite the fact that there was no stay granted by this Court of the earlier order dated 11th October 2004 of the ITAT.

68. The net result is that the questions framed in the aforesaid appeal of the Revenue i.e. ITA 693 of 2009 on the above issues will necessarily have to be answered in favour of the Revenue."

5. For the above reasons already discussed in ITA No. 31 of 2005, questions (iii) and (iv) above are answered in the affirmative i.e. in favour of the Revenue and against the Assessee. However, in view of the judgment rendered today in ITA 31 of 2005, questions (i) and (ii) are answered in the negative i.e. in favour of the assessee and against the Revenue.

6. As far as question (v) is concerned, in view of the decision today in ITA 250 of 2005, it is answered in the affirmative i.e.in favour of the assessee and against the Revenue.

7. The appeal is disposed of in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

DECEMBER 07, 2017/*Rm*