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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No. 397/2009

Reserved on: 11th November 2017

Decided on: 7th December, 2017

COMMISSIONER OF INCOME TAX, DELHIAppellant

Through: Mr. Ruchir Bhatia, Senior Standing Counsel, Mr. Puneet Rai, Junior Standing Counsel and Mr. Gaurav Kheterpal, Advocate.

versus

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

07.12.2017

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Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the impugned order dated 30th June 2008 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.2696/Del/2007 for the AY 2004-05.

2. While admitting this appeal on 28th January 2010, the following questions



of law were framed for consideration:

1. Whether the Income Tax Appellate Tribunal (ITAT) erred in holding that duty drawn back accrues to the assessee only on passing of the order by appropriate authority and not in the year of export?
 2. Whether the ITAT is right in law in holding that unutilized MODVAT credit for earlier years adjusted in assessment years in question should be treated as actual payment of the excise duty under Section 43B of the Income Tax Act, 1961?
 3. Whether on the facts and circumstances of the case the ITAT erred in deleting the addition of Rs 6,17,26,038/- made by the Assessing Officer on account of alleged excess consumption of raw materials and components shown by the Assessee?
 4. Whether the ITAT erred in setting aside the order of CIT (A) and direct the Assessing Officer not to reduce the amount of deduction allowable under Section 80-IB from the profits of business for the purpose of computing deduction under Section 80HHC?
3. In view of the decision of this Court rendered today in ITA No. 250 of 2005:
- (a) Question 1 is answered in the negative, i.e. in favour of the Assessee and against the Revenue.
 - (b) Question 2 is answered in the negative, i.e. in favour of the Revenue and against the Assessee.
 - (c) Question 3 is answered in the negative, i.e. in favour of the Assessee and against the Revenue.
4. As far as Question 4 is concerned, in view of the decisions in *Great Eastern Exports v. CIT [2011] 332 ITR 14 (Del)* and *Associated Capsules*



(P.) Ltd. v. DCIT [2011] 332 ITR 42 (Bom), it is answered in the affirmative, i.e. in favour of the Revenue and against the Assessee.

5. ITA No. 397 of 2009 is disposed of accordingly.

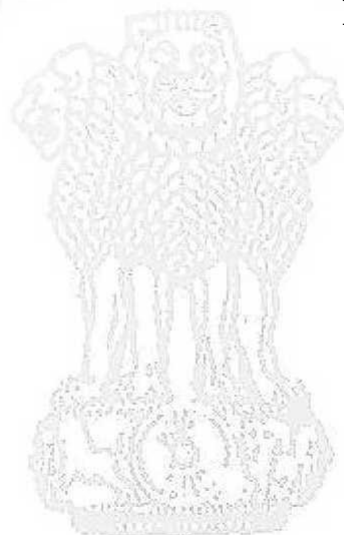
S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

DECEMBER 07, 2017

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HIGH COURT OF DELHI



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