

ASSISTANT COMMISSIONER CGST AND CENTRAL EXCISE VS MR. PRADEEP KABRA RESOLUTION PROFESSIONAL OF M/S CENGRESS TILES LTD.

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Summary of the Case

Details of the Parties

- **Appellant:** Assistant Commissioner, CGST & Central Excise, Kadi Division
- **Respondent:** Pradeep Kabra, Resolution Professional (RP) of M/s. Cengres Tiles Limited
- **Counsel for Appellant:** Ms. Anushree Narain, SSC, with Mr. Anks Kumar, Advocate
- **Counsel for Respondent:** Mr. Ravi Raghunath and Mr. Aditya Sharan, Advocates

Facts of the Case

1. The National Company Law Tribunal (NCLT), Ahmedabad Bench, approved the Resolution Plan of M/s. Cengres Tiles Limited on **13.09.2023**.
2. The Appellant, claiming dues under the Central Goods and Services Tax (CGST) and Central Excise Acts, was allocated **₹1,00,000** against an admitted claim of **₹11,76,90,942** in the Resolution Plan.
3. Dissatisfied with the treatment of its claim as operational debt, the Appellant filed the present appeal, seeking recognition as a secured operational

creditor and challenging the Resolution Plan.

Issues Involved

1. Whether the Appellant's claim under the CGST and Central Excise Acts should be treated as secured debt.
2. Whether the Appellant was entitled to higher payment in the Resolution Plan, equal to other secured creditors.
3. Applicability of the Supreme Court judgment in **State Tax Officer vs. Rainbow Papers Limited (2023)** and **Sanjay Kumar Agarwal vs. State Tax Officer (2023)** to this case.

Judgment

1. The National Company Law Appellate Tribunal (NCLAT) upheld the NCLT's decision to approve the Resolution Plan.
2. The Appellant's claim was treated as **operational debt**, in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC), 2016.
3. NCLAT distinguished this case from the **Rainbow Papers Limited** judgment, noting that the Central Excise Act, 1944 (Section 11E) and the CGST Act, 2017 (Section 82) specifically exempt the application of "first charge" claims in the context of the IBC.
4. NCLAT referred to previous decisions, such as **Assistant Commissioner of Central Tax, CGST Division vs. Sreenivasa Rao Ravinuthala** and **Department of State Tax vs. Zicom Saas Pvt. Ltd.**, to conclude that statutory dues under the CGST and Central Excise Acts cannot be treated as secured claims under the IBC.
5. The Tribunal found no violation of Section 30(2)(b) of the IBC, as the Appellant had been allocated the liquidation value to which it was entitled under the waterfall mechanism in Section 53(1).

Conclusion

The NCLAT dismissed the appeal, affirming that statutory dues

under the Central Excise and CGST Acts are treated as operational debt under the IBC. The Resolution Plan's allocation to the Appellant was found to be compliant with the law, and no error was found in the Adjudicating Authority's approval of the plan.