`1IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal Nos.2375 and 2376 of 2008
& M.P.No.1 of 2008

The Commissioner of Central Excise,
Chennai - I Commissionerate,
(Old No.121) New No.26/1, M.G.Road,
Nungambakkam, Chennai - 34.
.. Appellant in both C.M.As

versus

1. M/s.KTV Oil Mills,
No.7/3, Arul Nagar Salai,
Kodungaiyur, Chennai - 600 118.

2. Customs, Excise and Service Tax Appellate Tribunal (CESTAT),
South Zone Bench, Shastri Bhavan Annexe,
1st Floor, No.26, Haddows Road,
Chennai - 600 006.
.. Respondents in both C.M.As

PRAYER: APPEALs under Section 35G of the Central Excise Act against the order dated 25.10.2006 made in Final Order Nos.995 & 996 of 2006 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.Rajnish Pathiyil

For Respondent : Mr.G.RM.Palaniappan- R1

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal filed as against the order of the Tribunal was admitted by this Court on the following substantial question of law:

" Whether the Tribunal is correct in holding that the activity undertaken by the first respondent falling under chapter 15 of Central Excise Tariff Act, 1985 does not amount to manufacture?"

2. At the outset, learned counsel for the first respondent objected to the maintainability of the appeals before this Court on the above question of law raised by the department. It is the plea of the learned counsel for the first respondent that Section 35G of the Central Excise Act, 1944 provides that an appeal on the issue whether the activity of the assessee does not amount to manufacture would not lie before this Court. He placed strong reliance on the decision of the Karnataka High Court in the case of CCE Mangalore V. Mangalore Refineries & Petrochemicals Ltd., wherein it is held as under:

"42. Broadly the following disputes do not fall within the jurisdiction of High Court under Section 35(g) of the Act:-

(a) Dispute relating to the duty of excise payable on any goods.

(b) The value of the goods for the purposes of assessment.

(c) A dispute as to the classification of goods.

(d) Whether those goods are covered by an exemption notification or not.

(e) Whether the value of goods for the purposes of assessment is required to be increased or decreased.

(f) The question of whether any goods are excisable goods or not.

(g) Whether a process is a manufacturing process or not, so as to attract levy of excise duty.

(h) Whether a particular goods fall within which heading, sub-heading or tariff item or the description of goods as mentioned in column No.3 of the Central Excise Tariff Act, 1985."

3. In the present case, the issue that arises for consideration is whether the activity undertaken by the assessee falling under chapter 15 of the Central Excise Tariff Act, 1985 does not amount to manufacture. Therefore, the objection of the learned counsel for the first respondent is sustained.

4. In the light of the above, following the above-said decision of the Karnataka High Court, we hold that the above appeals are not maintainable and accordingly, the same are dismissed giving liberty to the appellant to pursue the matter before the Supreme Court. Since the appeals are held not maintainable, we do not propose to go into the merits of the question of law raised for consideration. No costs. Consequently, M.P.No.1 of 2008 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl

To

1. Customs, Excise and Service Tax Appellate Tribunal, Shastri Bhavan Annexe, No.26, Haddows Road, Chennai - 600 006.

+1cc to Mr.G.R.M. Palaniappan, Advocate, S.R.No.28759

+2cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.29129

Copy to: The Section Officer, VR Section, High Court, Madras.

SR(CO)
EU(01/07/2015)

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& M.P.No.1 of 2008