IN THE HIGH COURT OF JUDICATURE AT MADRAS
16.12.2016

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

C.M.A.No.2211 of 2010

Commissioner of Central Excise
and Service Tax,
1 Williams Road,
Cantonment, Tiruchirapalli 620 001.
.. Appellant/Respondent

Versus
M/s.L.G.Balakrishnan & Bros. Ltd.,
D. Gudalur,
Vedasandur Taluk,
Dindigul District 624 620 .. Respondent/Applicant

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order No.155 of 2010 dated 04.02.2010 on the file ofthe Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai -6.

For Appellant .. Mr.K. Mohanamurali
For Respondent .. Mr.K.S.Venkatagiri

JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

This Civil Miscellaneous Appeal is filed by the Revenue calling in question the correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 04.02.2010 in Final Order No.155 of 2010 and has been admitted on 3.9.2010 for consideration of the following substantial questions of law:

2. The following substantial questions of law are raised :
"1. In the facts and circumstances of the case whether the Honourable Tribunal was correct in holding that the service tax credit taken by the assessee on the basis of supplementary invoices/bills/challans issued by service provider after detection of evasion of service tax and registration of offence case by the department was in accordance with the provisions of

rule 9(1) of CENVAT Credit Rules, 2004 and rule 4A of Service Tax Rules, 1994"?

2. Whether wrong quoting of provision of law either in the Show Cause Notice or in the Order-in-Original itself would invalidate those proceedings if otherwise the same are well within the competency of the authority who issued such proceedings and also empowered to do the same under other provisions of law?"

3. Circular instruction issued by the Central Board of Excise and Customs, New Delhi in F.No.390/Misc./163/2010 J.C. dated 17.12.2015 stipulates that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.15 lakhs. In the instant case, the tax effect is less than the monetary limit imposed and the appeal is, hence, dismissed as not pressed, preserving the substantial question of law for determination in an appropriate case. No costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To
The Registrar
The Customs And Excise Service Tax appellate Tribunal,
(CESTAT),
South Zonal Bench,
Chennai 6.

+1 CC to M/s. K.S. Venkatagiri, Advocate sr 73725
+1 CC to M/s. K. Mohanamurali, Advocate sr 73508

C.M.A.No.2211 of 2010

SK(CO)
sp/10/2