IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/6/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Civil Miscellaneous Appeal No.2444 of 2009

The Commissioner of Central Excise &
Service Tax
No.1 Williams Road
Cantonment
Tiruchirapalli 620 001. ...Appellant/Appellant

Vs

M/s.Church's Auxiliary for Social Action
(CASA)
Tsunami Rehabilitation and Reconstruction Programme
No.62 Cooks Nagar
Near A.D.M College for Women
Velippalayam
Nagapattinam. ...Respondent/Respondent

Prayer: Appeal filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.172 of 2009 dated 11/2/2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

For appellant : Mrs.R.K.Sekina Reshma

For respondent : Mr.K.Jayachandran

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J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

This Appeal has been filed against the order dated 11/2/2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, in Final Order No.172 of 2009.

2. Substantial questions of law raised in the instant appeal are:-

> "1. Whether the Hon'ble Tribunal which itself is a creature of the Central Excise Act, 1944 is not bound by the Notification No.32/2005-C.E dated 17/8/2005 as amended, issued under statutory provision of Section 5 A of the Central Excise Act, 1944 prescribing the period of limitation for filing refund claim and could traverse beyond such clear statutory provision?
>
> (b). Whether the Hon'ble Tribunal could apply the time limit specified under Section 11 B to the present case in the place of clear statutory provision relating to the period of limitation for filing refund claim prescribed in the Notification No.32/2005-C.E dated 17/8/2005 as amended, issued under Section 5 A of the Central Excise Act, 1944 having its own self contained procedure, manner and method for its implementation, which leaves no scope for applying the provisions of Section 11 B to the cases covered by it?
>
> (c). Whether the Hon'ble Tribunal is right in applying the provisions of Section 11 B relating to time limit for filing refund claim to the refund claim envisaged under the Notification No.32/2005-C.E dated 17/8/2005 without appreciating the legal position that the Section and the Notification operate on different spheres with different mode of computation of time limit?"

3. On this day, when the matter came up for hearing, Mrs.R.K.Sekina Reshma, learned Standing Counsel appearing for the Department submitted that on the basis of the instructions given in Circular No.I/10/10/2016 Legal, dated 21/3/2016, appellant department has instructed her to withdraw the appeal.

4. Placing on record the above submission, while dismissing the Civil Miscellaneous Appeal No.2444 of 2009, as withdrawn, substantial questions of law raised are left open. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mvs

To

1.The Customs
Excise and Service Tax Appellate Tribunal
South Zonal Bench,
Chennai

2.The Section Officer
VR Section
High Court Madras

+1 cc to Mrs.R.K.Sekina Reshma Advocate sr.32066

Civil Miscellaneous Appeal No.2444 of 2009

nm(co)
aa24/06/2016