IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/7/2016

C O R A M

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

Civil Miscellaneous Appeal No.3242 of 2007

The Commissioner of Central Excise
Chennai IV Commissionerate
692 MHU Complex
Nandanam
Chennai 600 035. ... Appellant

Vs

1. M/s.Megatech Control Limited
F.2 Phase III Thiru-vi-ka Industrial Estate
Ekaduthangal
Chennai 97.

2. Customs, Excise and Service Tax
Appellate Tribunal
South Zone Bench
Shastri Bhavan Annexe
I Floor, 26 Haddows Road
Chennai 600 006. ... Respondents

Prayer: Appeal filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.716 of 2007 dated 15/6/2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai against the order in Appeal NO.106/2006(M-IV) dated 29/12/2006 passed by the Comissioner (Appeals) Chennai against the order in Original No.13/2006, dated 18/04/2005 passed by the Additional Comissioner Chennai IV Commissionerate, Chennai against the show Cause Notice NO.4/2016 in C.No.V/15/85/5/2006 CX Adj IV, dated 20/01/2016 issued by the Deputy Commissioner of Central Excise, Chennai.

For appellant : Mr.A.P.Srinivas
Senior Standing Counsel

For respondent : Mr.N.Viswanathan
for R.1
R.2 - Tribunal

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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 Final Order No.716 of 2007 dated 15/6/2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

2. The substantial question of law raised in the instant appeal is:-

> "Whether the Tribunal is right in holding that payment of duty prior to issue of show-cause notice is sufficient ground for setting aside the mandatory penalty @ 25% of duty amount imposed in accordance with first proviso to Section 11 AC of Central Excise Act, 1944 in the face of express provisions in Section 11 AC of Central Excise Act, 1944 providing for mandatory levy of penalty when the conditions viz., suppression and wilful mis-statement of facts with intent to evade duty specified therein are satisfied?"

3. On this day, when the matter came up for hearing, Mr.A.P.Srinivas, 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 him to withdraw the appeal.

4. Placing on record the above submission, while dismissing the Civil Miscellaneous Appeal No.3242 of 2007, as withdrawn, substantial question of law raised is left open. No costs.

s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

mvs

To

1.The Customs, Excise and Service Tax
Appellate Tribunal
South Zone Bench
Shastri Bhavan Annexe
Ist Floor 26 Haddows Road,
Chennai-600 006

2.The Commissioner of Central Excise(Appeals)
Chennai IV Commissionerate
692, MHU complex
Nandanam, Chennai-600 035

3.The Additional Commissioner of Central Excise
26/1, Mahatma Gandhi Road,
Chennai-600 034

4.The Deputy Commissioner of Central Excise
Chennai IV Commissionerate
692 MHU Complex
Nandanam Chennai-600 035

+1 cc to Mr.A.P.Srinivas Senior Standing Counsel customs,
Central Excise and Service Tax, vide sr 38738

Civil Miscellaneous Appeal No.3242 of 2007

aa16/08/2016