IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/8/2016

C O R A M

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

R.C. No.9 of 2008

Commissioner of Central Excise
Madurai. ... Appellant

Vs

M/s.Shiva Distilleries Ltd
(Textiles Division)
Velavarkottai 624 803. ... Respondent

Prayer: R.C filed under Section 35 H (1) of the Central Excise Act, 1944, to seek directions to the CEGAT to refer the questions of law arising from F.O.No.449/2002 dated 12/4/2002.

For appellant ... Mr.T.Pramodkumar Chopd
Senior Standing Counsel
for CBEC.

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J U D G M E N T

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

R.C. has been filed to seek directions to the CEGAT, to refer the questions of law, arising from F.O.No.449/2002, dated 12/4/2002.

2. The substantial questions of law raised in the instant

Revision Case Petition are:-

(i). Whether in the facts and circumstances of the case, it is correct in law for the Tribunal to pass order holding that the carding and combing machineries which produced final product namely cotton, carded or combed cotton falling under Chapter heading 52.02 as eligible capital goods, when this heading remained specifically excluded from the purview of capital goods under erstwhile Rule 57 Q as it stood during the material time, by over-riding the legal provisions?

(ii). Whether the ratio of the decision of the Hon'ble Apex Court in the case of Commissioner of Central Excise, Coimbatore Vs. Jawahar Mills Ltd., reported in 2001 (132) ELT 3 (SC) is applicable to goods which remained specifically excluded from the list of eligible capital goods under Rule 57 Q as it stood?”

3. Reference sought to be made, in R.C.P.No.6 of 2003, in the case of Commissioner of Central Excise, Madurai Vs. M/s. Shiva Distilleries Ltd., is sought to be withdrawn, on the request made by Mr.Pramodkumar Chopda, learned Standing Counsel for CBEC, vide letter, dated 12/8/2016, which shall be treated as part of the records.

4. Submission to the said effect has also been made and he has also made an endorsement to the following effect:-

> “As per the Board Circular in F.No.390/Misc/163/2010-JC dated 1/1/2016, the above case is below the threshold limit of Rs.15 lakhs. Hence petitioner may be permitted to withdraw the R.C.No.9/2008.”

S.MANIKUMAR,J

a n d

D.KRISHNAKUMAR,J

mvs.

5. Placing on record the above, while dismissing the R.C. No.9 of 2008, as withdrawn, substantial question of law raised are left open. No costs.

(S.M.K.,J) (D.K.K.,J)
30th August 2016.

mvs.

To

The Commissioner of Central Excise, Madurai.

R.C.No.9 of 2008