IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2017

CORAM:

THE HONOURABLE THIRU.JUSTICE RAJIV SHAKDER
AND
THE HONOURABLE THIRU.JUSTICE R. SURESH KUMAR

C.M.A.No.1929 of 2011 and
M.P.No.1 of 2011

M/s. Seshayee Paper and Boards Limited,
Pallipalayam,
Erode – 638 007. ... Appellant

Vs.

1. The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem 636 001.

2. The Customs, Excise & Service Tax Appellate Tribunal,
No.26, Haddows Road,
Shastri Bhavan, Chennai 600 006. ... Respondents

PRAYER: This Civil Miscellaneous Appeal filed under Section 35 G of the Customs and Excise Act, to set aside the Final Order No.348/2011, dated 22.02.2011 on the file of the 2nd respondent and allow the appeal.

For Appellant : Mr. Muthu Venkatraman for
Mr. Mohammed Shaffiq
For R1 : Mr.S.Rajasekar

JUDGEMENT

1. This is an appeal directed against the final Judgment and order of the Customs, Excise and Service Tax Appellate Tribunal (in short, 'the Tribunal') dated 22.02.2011.

2. Mr. Muthu Venkatraman, learned counsel for the Appellant / Assessee informs us that the questions of law framed in the captioned appeal are covered against the Appellant / Assessee, by virtue of the Judgment in the following case:**Commissioner of Central Excise, Madras Vs. Addison & Co. Ltd., 2016 (339) E.L.T. 177 (S.C)**.

3. To be noted, the appeal was admitted on 21.07.2011, when the following question of law was framed for consideration by this Court:

> "1) Whether the Tribunal failed to see that Section 11 B which provides for claim for refund of duty while requiring the applicant to prove that the duty had not been passed on by him to any other person by letting in documentary or other evidence, however, does not prescribe nor exclude any specific document being let in as evidence ?

> 2) Whether the Tribunal after finding that the appellant has refunded the excess duty collected to its customers by way of credit notes has completely misdirected itself in rejecting the petitioner's claim for refund on the erroneous premise that the refund to its customers were made through credit notes which is not a valid document for the purpose of Section 11 B?"

4. We are informed that a Review Petition (R.P. (c).No.884 of 2017) was preferred against the said Judgment, which was dismissed on 27.4.2017.

5. The appeal is, accordingly, dismissed. The questions of law, as framed, are answered in favour of the Revenue and against the Assessee. Consequently, pending M.P.No.1 of 2011 is closed. There shall be no order as to costs.

[R.S.A.J.,] [R.S.K. J.,]
22.06.2017

Speaking Order/Non Speaking Order
Index: Yes/No Internet:Yes/No
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<u>RAJIV SHAKDER,J.</u>
<u>and</u>
<u>R. SURESH KUMAR</u>

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To
The Customs, Excise & Service Tax Appellate Tribunal,
No.26, Haddows Road,
Shastri Bhavan, Chennai 600 006.

<u>C.M.A.No.1929 of 2011</u>

22.06.2017