IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable MRs.JUSTICE V. BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1947 of 2017

M/s. Mak Control & Systems Pvt Ltd
rep. By A.Shanthi
Deputy Manager - Commercial and
Authorized Signatory
Coimbatore. ..Appellant

Vs

The Commissioner of Central Excise
Coimbatore 641 018. ..Respondent

Appeal filed under Section 35 G of the Central Excise Act, 1944, against the Final order No.40025 of 2007 dated 4/1/2017, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai 6.

For Appellant : Ms.D.Naveena
For Respondent : Mr.A.P.Srinivas

J U D G M E N T

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

Challenge in this Civil Miscellaneous Appeal, is to a final order No.40025 of 2017, dated 4/1/2017, passed by the CESTAT, Madras, dismissing the appeal, on pecuniary grounds.

2. Impugned order reads thus:-

> "Tribunal being over occupied with the heavy demand cases, this small duty demand of Rs.2.80 lakhs shall be unproductive to be taken up. Accordingly, that is dismissed on pecuniary jurisdiction in so far as duty demand is concerned.
>
> 2. However, considering that interpretation of classification was involved in the appeal, penalty is waived.

> 3. In the result, appeal is allowed partly to the above extent.”

3. Placing reliance on the Division Bench judgment of this Court, in Roots Multiclean Ltd., Vs. CESTAT, Chennai, reported in 2016 (336) E.L.T.25 (Mad.), the appellant has sought for reversal of the final order and for re-adjudication on merits, by the Tribunal, arising on the following substantial questions of law:-

> “1. Whether, in the facts and circumstances of the case, the Hon'ble CESTAT can dismiss an appeal, relating to determination of rate of duty, on pecuniary grounds, without mentioning the statutory provisions in terms of which it can be done?
>
> 2. Whether, in the facts and circumstances of the case, the Hon'ble CESTAT can dismiss an appeal, relating to determination of rate of duty, on pecuniary grounds, without considering clause (i) of second proviso of sub-section 1 of Section 35 B of the Central Excise Act, 1944?
>
> 3. Whether in the facts and circumstances of the case, statutory obligation is on the Hon'ble CESTAT in terms of Section 35 C of the Central Excise Act, 1944, to dispose on merits after being heard, an already admitted appeal under Section 35 B of the Central Excise Act, 1944, relating to determination of rate of duty?”

4. Material on record, discloses that on 10/7/2017, we directed Mr.A.P.Srinivas, learned counsel for the Commissioner of Central Excise, Coimbatore, to take notice and revert.

5. Going through the impugned order, averments in the supporting affidavit and other materials available on record, Mr.A.P.Srinivas, learned counsel for the CESTAT, fairly submitted that the issues raised in the instant appeal are squarely covered by the reported decision in Roots Multiclean Ltd's case.

6. We have also gone through the reported judgment.

7. Placing on record the submission of the learned counsel for the CESTAT/respondent, substantial questions of law, extracted supra, merit consideration.

8. Substantial questions of law are answered in favour of the assessee. Accordingly, this C.M.A is allowed and the impugned final order No.40025 of 2017, dated 4/1/2017, passed by the CESTAT, Madras, is set aside. CESTAT is directed to adjudicate the issues raised in the appeal and pass orders on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Commissioner of Central Excise
Coimbatore 641 018.

2. The Assistant Registrar, Customs Excise & Service Tax
Appellate Tribunal, 26, Sastri Bhavan
Annexe Building, Haddews Road, Chennai-96

+ 1 cc to M/s. S. Durairaj, Advocate SR.49974
+ 1 cc to M/s. A.P. Srinivas, Senior Standing SR.50274

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MV(CO)
Eu 14.09.17