IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/7/2017

C O R A M

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

CIVIL MISCELLANEOUS APPEAL NOS.2185 AND 2186 OF 2017 &
CMP.11606 OF 2017 & 11607 OF 2017

M/s. Attikunna Tea Factory
rep. By its General Manager
Mr.A.K.Pradeep Kumar
Parry Agro Industries Ltd
Uppati Post
Pandalur
Nilgiris 643 241. ... Appellant in C.M.A.No.2185 of 2017

M/s. Carolyn Tea Factory
rep. By its Senior General Manager
Murali Padikkal
Parry Agro Industries Ltd
Mango Range Post
Nilgiris 643 220. ... Appellant in C.M.A.No.2186 of 2017

Vs

The Commissioner of Central Excise
Coimbatore 641 018. ... Respondent in both Appeals

Prayer in C.M.A.No.2185 of 2017: Appeal filed under Section 35 G of the Central Excise Act, 1944, against the Final order No.41988 of 2016, dated 20/10/2016, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai 6.

Prayer in C.M.A.No.2186 of 2017: Appeal filed under Section 35 G of the Central Excise Act, 1944, against the Final order No.42034 of 2016, dated 20/10/2016, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai 6.

For appellants : Ms.D.Naveena

For Respondent : Mr.A.P.Srinivas

COMMON JUDGMENT

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

Challenge in these Civil Miscellaneous Appeals, is to final order Nos.41988 and 42034 of 2016, dated 20/10/2016, passed by the CESTAT, Madras, dismissing the appeals, on pecuniary grounds.

2. Impugned orders reads thus:-

> "Looking into the quantum of Additional Excise Duty of Rs.1,54,908/- involved and Tribunal being burdened with huge pendency, it is unproductive to waste time in this case, for which the appeal is dismissed on pecuniary jurisdiction in so far as duty demand is concerned. However, we find that there was an interpretational error of law between the parties for which, there shall not be penalty. That is waived. Appeal is allowed only to this extent. In the result, appellant gets partial relief on penalty only."

3. Placing reliance on the Hon'ble Division Bench judgment of this Court, in Roots Multiclean Ltd., Vs. CESTAT, Chennai, reported in 2016 (336) E.L.T.25 (Mad.), and on the following substantial questions of law, the appellants have sought for reversal of the final orders and for re-adjudication, on merits, by the Tribunal.

> "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. Mr.A.P.Srinivas, learned counsel for the Commissioner of Central Excise, Coimbatore, accepts notice on behalf of the respondent.

5. Going through the impugned orders, averments in the supporting affidavits and other materials available on record, Mr.A.P.Srinivas, learned counsel for the CESTAT, fairly submitted that the issues raised in the instant appeals 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 assessees. Accordingly, the writ petitions are allowed and the impugned final order Nos.41988 and 42034 of 2016, dated 20/10/2016, passed by the CESTAT, Madras, are set aside. CESTAT is directed to adjudicate the issues raised in the appeals and pass orders on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Commissioner of Central Excise
   Coimbatore 641 018.

2. The Registrar,
   Customs, Excise and Service Tax
   Appellate Tribunal,
   Chennai 6.

+2cc to Mr.S.Durairaj, Advocate, S.R.No.51514 & 51515
+2cc to Mr.A.P.Srinivas, Advocate, S.R.No.51620 & 51623

C.M.A.Nos.2185 and 2186 of 2017

MP(CO)
CS/08/08/17