IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/11/2017

CORAM

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Civil Miscellaneous Appeal No.3013 of 2017

Commissioner of Central Excise
O/o The Commissioner of Central Excise,
Customs & Service Tax
6/7 A.T.D Street
Race Course Road,Coimbatore ... Appellant

vs

M/s. Poornam Beverages (P) Ltd
341/2 Pollachi Main Road
Thamaraikulam
Pollachi 642 109. ... Respondent

Appeal filed under Section 35 G of the Central Excise Act, 1944, against the Final Order No.40298/2014, dated 25/4/2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant ... Ms.R.Renuga Devi
for Mr.A.P.Srinivas

JUDGMENT

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

Final Order No.40298/2014, dated 25/4/2014, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, is challenged in the instant appeal on the following substantial questions of law:-

> "1. Whether the Hon'ble Tribunal is correct in holding that the assessee is entitled to claim refund on the accumulated credit when adjustment of the Cenvat Credit is possible for the domestic clearances?

2. Whether the Hon'ble Tribunal is correct in granting refund when the assessee/respondent has not fulfilled the governing statutory provisions for grant of refund viz., Rule 5 of the Cenvat Credit Rules, 2002 and Notification No.11/2002-CE (NT) dated 1/3/2002?"

2. On this day, when the matter came up for hearing, on the basis of Letter C.No.1/10/50-2014-LG, dated Nil/11/2017, addressed to Mr.A.P.Srinivas, learned Senior Standing Counsel, submission has been made that Department has instructed to withdraw the appeal.

3. Contents of the above said letter is reproduced hereunder:-

> "In this regard, the following circulars were again verified and the factual position is as follows:-
>
> (a). F.No.390/Misc/163/2010-JC dated 17/8/2011:- As per the issues and clarifications portion it has been stated that the monetary limits being prescribed would apply to cases of refund as well.
>
> (b). F.No.390/Misc/163/2010-JC dated 17/12/2015: Through the notification an insertion was made in the above cited notification. It is as follows:- "In para 3 of the instruction dated 17/8/2011 a sub-clause "c" shall be added which shall be read as "classification and refunds issues which are of legal and/or recurring nature."
>
> (c). F.No.390/Misc./163/2010-JC dated 30/12/2016 - The limit for appeal to High Court has been raised to Rs.2000000/-
>
> From the above, it can be see that the prescribed monetary limit is Rs.2000000/- and the monetary limit for withdrawal of case is applicable to refund issue also. The only rider is that the classification and refunds issues which are of legal and/or recurring nature cannot be withdrawn.
>
> In this regard, it is also seen that the order against appeal made does not challenge

of the constitutional validity of the provisions of an Act or Rule or any notification/instruction/order or circular has been held illegal or ultravires and also it is seen that there is no classification of goods is involved in the issue. It is also seen that the refund was held up not upon the legal ground but upon the question of not using the credit on various occasions and not also furnished the relevant original documents in time. Further, as per the report of jurisdictional divisional officer the issue is of one time in nature and not a recurring one.

As this case is a refund claim for Rs.1900000/- only and also not in recurring nature, your kindness may withdraw the case as earlier conveyed:-

"Commissioner has accorded permission to withdraw it from the Hon'ble High Court based on Boards above reference."

4. Placing on record the above, leaving the substantial questions of law open, instant Civil Miscellaneous Appeal is dismissed as withdrawn. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

The Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench, Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.81880
+1cc to Mr.S.Jai kunmar Advocate, S.R.No.81783

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CS/29/11/17