IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23-02-2017

CORAM:

THE HONOURABLE THE HULUVADI G. RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.No1469 of 2010

The Commissioner of Central Excise
Coimbatore ... Appellant/Appellant

Vs.

1. M/s. Shanthi Forune (India) Private Ltd.,
38, Trichy Road, Palladam
Coimbatore – 642 664

2. The Customs, Excise and Service tax Appellate Tribunal
South Zonal Bench, Shastri Bhavan Annex
26, Haddows Road
Chennai – 600 006 . Respondents/Respondents

Civil Miscellaneous Appeals under new Section 35G of the Central Excise Act, 1944 against the CESTAT's final order No.1760 of 2009 dated 13-11-2009 in Appeal No.S/55/2008 on the file of the Honourable Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai received on 07-12-2009.

For appellant :: Mr. K.S. Ramasamy
For respondents:: R1 Not Reader
R2 Tribunal

JUDGMENT

(HULUVADI G. RAMESH,J.)

The civil miscellaneous appeal is filed against the order of Customs, Excise and Service Tax Appellate Tribunal in final order No.1760 of 2009 dated 13-11-2009 in Appeal No.S/55/2008 on the file of the Honourable Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai.

2. The civil miscellaneous appeal is admitted on the following substantial question of law :

"(i) Whether the Hon'ble Tribunal is correct in allowing the appeal preferred by the assessee by granting relief to them in contrary to the statutory provisions stipulated under Rule 2(1)(d)(v) of Service Tax Rule, 1994 read with Section 68 of the Finance Act, 1994 and Notification No.35/2004-ST dated 3.12.2004 inasmuch as the assessee falls under one of the categories of the specified persons who is liable to pay service tax?

(ii) Whether the Hon'ble Tribunal is correct in allowing the appeal of the assessee on the ground that the show cause notice proposed recovery of the tax on the ground that the assessee where not liable to claim abatement in terms of Notification No.32/2004 ST dated 3.12.2004 while the adjudication order confirms the demand on the different ground namely, that the abatement is available only if the condition set out in Board's Circular are satisfied which assessee did not satisfy when the show cause notice was issued by the Department demanding service tax on the entire taxable amount without allowing any abatement under Notification No.32/2004 ST dated 3.12.2004 non fulfillment of the conditions of the Notification?

(iii) Whether the Hon'ble Tribunal is correct in placing reliance on the decision of the Hon'ble Tribunal in the case of Commissioner of C.Ex & Customs, Guntur Vs. Kanaka Durga Oil Products Ltd. & others (2009 (15) STR 399 (Tri.Bang) when the assessee falls under one of the category of specified persons specified under Rule 2(1)(d)(v) of Service Tax Rules, 1994 as recipient of services who paid the freight charges and is liable for payment of service tax and also when the above CESTAT order has not been accepted by the Department and appeal has been preferred against the said order in the Hon'ble High Court?"

3. The learned counsel bring to our notice, Circular in C.No.I/10/10/2016 Legal dated 21-03-2016, wherein it is stated that the Central Board of Excise and Customs, New Delhi vide letter F.No.390/Misc./163/2010 J.C. dated 17-12-2015 has fixed the monetary ceiling for filing appeals before the High Court at Rs.15,00,000/-. Learned counsel for the Department thus seeks to withdraw the appeal.

4. In view of the above, without going into the merits and preserving the question of law for adjudication in an appropriate case, the civil miscellaneous appeal is dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

To

1. The Commissioner of Central Excise
Coimbatore

2. The Customs, Excise and Service
tax Appellate Tribunal
South Zone Bench, Shastri Bhavan Annex
1st Floor, No.26, Haddows Road
Chennai - 600 006

+1cc to Mr.K.s. Ramesamy Advocate, S.R.No.11848

rsk(CO)
md(20/03/2017)

C.M.A.No1469 of 2010