IN THE HIGH COURT OF JUDICATURE AT MADRAS

31.1.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
and
The Hon'ble Dr. Justice ANITA SUMANTH

C.M.A.No.1280 of 2009

Commissioner of Central Excise
Chennai-I, Commissionerate,
26/1 , (Old No.121), M.G.Road,
Chennai 600 034. Appellant

Versus

M/s.Indian Steels & Allied Products,
No.110, T.H. Road,
Tondiarpet,
Chennai 600 081. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order No.1056 of 2008 dated 25.9.2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant : Mr.A.P.Srinivas,
Standing Counsel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order of the Customs, Excise and Service Tax Appellate Tribunal in Final Order No.1056 of 2008 dated 26.9.2008.

2. The following substantial questions of law are raised :

> "1. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in dropping the demand of duty by allowing the suo motu availment of rebate amount in PLA by the respondent which is contrary to the provision of erstwhile Rule 173G of the Central Excise Rules, 1944?
>
> 2. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in allowing adjustment of excess duty paid in earlier months towards payment of duty, as there is no provision in the Central Excise Law to adjust suo motu any duty paid in excess against,

without undergoing the procedures prescribed under Section 11B of the Central Excise Act, 1944?

3. Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in deleting the levy of penalty under Section 11AC of the Central Excise Act, 1944 when it is mandatory penalty where there is no scope for any discretion?"

3. The learned counsel brought to our notice, Circular in C.No.I/10/10/2016 Legal dated 21.3.2016, 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the questions of law for adjudication in an appropriate case, this Civil Miscellaneous Appeal is dismissed as withdrawn. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ssk.

To:
1.The Commissioner of Central Excise
Chennai-I, Commissionerate,
26/1 , (Old No.121), M.G.Road,
Chennai 600 034.

2.The Customs, Excise and Service
Tax Appellate Tribunal (CESTAT),
South Zonal Bench, Chennai 600 006.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.A.P.Srinivas Advocate sr.5816

C.M.A.No.1280 of 2009

kj1(co)
ss(28/02/2017)