IN THE HIGH COURT OF JUDICATURE AT MADRAS

25.01.2017

Coram:

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

C.M.A. No.422 of 2012

Commissioner of Central Excise
and Service Tax,
1, Williams Road, Cantonment,
Tiruchirapalli-620 001. .. Appellant

Versus

1.M/s.Moorvi Exports,
NH-7, New Madurai Bye-pass Road,
Karur-639 002.

2.Customs Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Sastri Bhawan Annex-1,
Haddows Road, Chennai-6. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 35G(2) of Central Excise Act, 1944 against the Final Order No.579/2010 dated 21.05.2010 passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

For Appellant .. Mr.A.P.Srinivas, CGSC
For Respondents .. R1 Not ready notice
R2 Tribunal

JUDGMENT
(Judgment of this Court was delivered by ANITA SUMANTH, J.)

This Civil Miscellaneous Appeal is filed by the Department calling in question the correctness of the order passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, dated 21.05.2010 in Final Order No.579/2010 and has been admitted on 16.02.2012 for consideration of the following substantial questions of law:

> "1. Whether the Hon'ble Tribunal is legal and correct in setting aside the penalty imposed under Section 78 of the Finance Act, 1994 without invoking Section 80

of the Finance Act, 1994 when there was wilful suppression of facts with an intent to evade service tax, as brought out in the show cause notice which was affirmed in Order-in-Original, which negate the sufficiency of cause being shown by the assessee?

2.Whether the Hon'ble Tribunal is right in holding that there is need in this case for imposition of penalty under Section 78 of the Finance Act, 1994, while the demand of service tax was held to be sustainable for extended period in terms of proviso to Section 73(1) of the Act which also required the above ingredients to be satisfied?

3.Whether the Hon'ble Tribunal is legal and correct in setting aside the penalty imposed under Section 76 of the Finance Act 1994 when there was admitted delay in discharge of service tax liability by the assessee attracting mandatory penalty under the said Section?”

2. Circular instruction issued by the Central Board of Excise and Customs, New Delhi in F.No.390/Misc./163/2010 J.C. dated 17.12.2015 stipulates that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.15 lakhs. In the instant case, the tax effect is less than the monetary limit imposed and the appeal is, hence, dismissed as not pressed, preserving the substantial question of law for determination in an appropriate case. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.Customs Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Sastri Bhawan Annex-1,
Haddows Road, Chennai-6.

+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.5332

sr(CO)
md(13/02/2017)

C.M.A.No.422 of 2012