

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CEA No.170 of 2017

Date:16.11.2017

Between.

The Commissioner of Central Excise,
Guntur Commissionerate
(presently Nellore Commissionerate)

..... Appellant

And.

M/s City Lubricants Pvt Ltd.,
Nellore.

....Respondent

Counsel for the appellant: Mr. M.V.J.K.Kumar

Senior Standing Counsel for Customs, Central Excise and Service Tax

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This appeal is filed by the Revenue against order, dated 26.8.2016, of the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad (for short 'the Tribunal') in Appeal No.E/362/2008, raising the following substantial questions of law.

“(i) Whether the Hon'ble Tribunal is correct in deciding the eligibility of input tax credit on LSHF-HSD to M/s City Lubricants when LSHF and HSD are different in nature?

(ii) Whether the Tribunal is correct in deciding that the assessee has not made any misdeclaration. Hence, the issue is hit by limitation, when the assessee had clearly misdeclared and his *mens rea* is established?”

As regards the first substantial question of law, since the Tribunal has concurred with the view of the Revenue that the respondent-assessee is ineligible for claiming the input tax credit on LSHF-HSD, the said question of law does not arise for consideration in this appeal.

As regards the second substantial question of law, the Tribunal has set aside the penalty on the ground that for a particular period, there was no misdeclaration by the respondent-assessee, and that the levy of penalty for the subsequent period is barred by limitation.

Having carefully considered the above-reproduced reasons assigned by the Tribunal, we do not find any reason to differ with the same. Therefore, the substantial question of law raised in ground No.21(ii) of the memorandum of grounds is answered against the Revenue.

The appeal is, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

16th November 2017

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