THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CENTRAL EXCISE APPEAL No. 79 of 2016

JUDGMENT: ***(Per VRS,J)***

The Revenue has come up with the present appeal under Section 35G of the Central Excise Act, 1944, raising the following questions of law:

> *1) Whether the Hon'ble CESTAT is correct in rejecting the departmental appeal on the reasons of monetary limits, without going into the merits of the case, as the issue involved in the appeal relates to refund of legal and recurring nature? and*
>
> *2) Whether the Hon'ble CESTAT had erred in rejecting the present appeal, while the decision of the Hon'ble High Court of A.P. and Telangana is awaited on the present issue involving the applicability of unjust enrichment?*

2. Heard Ms. Sundari R Pisupati, learned standing counsel for Customs, Central Excise and Service Tax, appearing for the appellant/Revenue.

3. On 27.01.2017, this Court directed the issue of notice to the respondent on the aforesaid questions of law. Though service of notice was completed long ago, the respondent/assessee has not chosen to enter appearance. Therefore, in view of the limited scope of the issue arising in this appeal, we have taken it up for disposal.

4. In the order impugned in this appeal, the CESTAT dismissed an appeal filed by the Department, on the ground that the monetary value was Rs.10.00 lakhs, which was within the ceiling limit. The grievance of the Department is that though the value of the appeal was only Rs.10.00 lakhs, the question involved related to refund of legal and other expenses, which were recurring in nature. Therefore, the question will keep coming up every year and, hence, the issue needed adjudication. More over, the question as to the applicability of unjust enrichment is already pending adjudication before this Court. Hence, the appeal before the Tribunal fell within the exceptions to the Circular.

5. In view of the above, the first question of law is answered in favour of the appellant/Revenue and the impugned order of the Tribunal is set aside. The matter is remitted back to the Tribunal for fresh consideration on merits, without reference to the Circular relating to monetary ceiling limit. The second question of law is not answered, in view of the fact that it is pending adjudication in other appeals. The appeal is disposed of accordingly.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

27th February, 2017
cbs

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AND

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C.E.A.No. 79 of 2016
(allowed)

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