IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

C.M.A..Nos.1093 and 1046 of 2018

1.The Commissioner of GST & Central Excise,
Chennai South Commissionerate
MHU Complex,
No.692, Anna Salai,
Nandanam, Chennai - 600 035. .. Appellant
in C.M.A.No.1093 of 2018

1.The Commissioner of Central Excise,
Puducherry Commissionerate,
Beach Road,
Puducherry - 605001. .. Appellant
in C.M.A.No.1046 of 2018

Vs.

1.M/s.Velvette International Pharma Products Ltd.,
(Herbal Division)
L-6, Sidco Industrial Estate,
Villivakkam, Chennai - 49. .. Respondent
in C.M.A.No.1093 of 2018

1.M/s.HCL Infosystems Limited, Unit III,
R.S.No.107/5,6&7,
Sedarapet,
Pondicherry - 605 111. .. Respondent
in C.M.A.No.1046 of 2018

Prayer in C.M.A.No.1093 of 2018: Civil Miscellaneous Appeal is filed under Section 35 G of Central Excise Act Read With Section 83 of Finance Act, 1944, against Final Order No.41232 of 2017, dated 19.07.2017, passed in Appeal No.STA/E/241/2002-DB, on the file of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

Prayer in C.M.A.No.1046 of 2018: Civil Miscellaneous Appeal is filed under Section 35 G of the Central Excise Act, 1944, against the Final Order No.42223 of 2017, dated 25.09.2017, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.V.Sundareswaran
(in C.M.A.No.1093 of 2018)

For Appellant : Mrs.Aparna Nandakumar
(in C.M.A.No.1046 of 2018)

For Respondent : Mr.K.Jayachandran
(in C.M.A.No.1093 of 2018)

For Respondent : Mr.Santhanagopalan
for Mr.Lakshmikumaran
(in C.M.A.No.1046 of 2018)

COMMON JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

C.M.A.No.1046 of 2018 is filed against the Final Order No.42223 of 2017, dated 25.09.2017, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, on the following substantial questions of law:-

"i) Whether the Hon'ble CESTAT, Chennai is correct in closing this case for the purpose of statistics when the decision of the Larger Bench of Tribunal, Chennai in the case of Lakshmi Automatics Loom Works Ltd. (Misc. Order No.430/2008 dated 10.10.2008 has obtained the seal of approval by the Apex Court in the case of Commissioner of Central Excise vs. Solectron Centum Electronics Ltd. (25.02.2014 - SC) : MANU/SC/0604/2014?"

"ii) Whether the Hon'ble CESTAT, Chennai is correct in passing an Order that is not in consonance/conformity with the provisions of Section 35 C of the Central Excise Act, 1944 and against the principle of law laid down by the Hon'ble Supreme Court in the case of Balaji Steel Re-rolling Mills v. CCE (Civil Appeal 10625/2014 dated 14.11.2014)?"

2. C.M.A.No.1093 of 2018 is filed against the Final Order No.41232 of 2017, dated 19.07.2017, passed in Appeal No.STA/E/241/2002-DB, on the file of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, on the following substantial questions of law:-

"1. Whether the Hon'ble CESTAT, Chennai is correct in closing this case for the purpose of statistics holding that the both sides are at liberty to file application before the Tribunal to reopen the matter as and when the case is disposed by the Hon'ble High Court or in case of any change of circumstance?

2. Whether the Hon'ble CESTAT, Chennai is

correct in passing an Order that is not in consonance/conformity with the provisions of Section 35 C of the Central Excise Act, 1944?"

3. As the orders impugned, in both the civil miscellaneous appeals, are similar, suffice to extract one such order made in C.M.A.No.1046 of 2018, dated 25.09.2017:-

"FINAL ORDER No.42223/2017

Per Bench

The above case has come up for hearing as per the published list. On perusal of records, it is seen that one of the issue for consideration in this appeal is whether the bought-out goods are eligible for exemption under Notification No.22/2003 and that the same was held against assessee by Larger Bench of Tribunal. That appeal is filed against the said decision of the Larger Bench before the Hon'ble High Court of Madras and the same is pending and interim stay granted. Both sides have not been able to submit when the matter is likely to be disposed by the Hon'ble High Court. The appeal is of the year 2009 and it has been pending before the Tribunal. Ahead of the transition of Indirect Tax to GST, this Tribunal has been given a mandate to dispose of all old cases, Viewed in this light, we are of the considered opinion that it would be appropriate and prudent to close the file for the purpose of statistics. We, however make it clear that the appeal along with stay order / Interim orders, if any, will continue before the Tribunal and the matter is closed only for the purpose of statistics. Both sides are at liberty to file application before the Tribunal to reopen the matter as and when the case is disposed by the Hon'ble High Court or in case of any change of circumstance.

2. In the result, the appeal is disposed as file closed."

4. Considering the limited challenge, Mr.Santhanagopalan, learned counsel for the respondent in C.M.A.No.1046 of 2018 and Mr.K.Jayachandran, learned counsel for the respondent in C.M.A.No.1093 of 2018, were put on notice.

5. Going through the material on record, both Mrs.Aparna Nandakumar, learned Senior Standing Counsel for the appellant in C.M.A.No.1046 of 2018 and Mr.V.Sundareswaran, learned counsel for the appellant in C.M.A.No.1093 of 2018, and the learned counsel for the respondents, stated supra, consented that the orders impugned in both the appeals, be set aside, and matters be remanded to CESTAT, Madras, either to dispose of the appeals filed before the Tribunal, on the basis of the decision made by the Tribunal/High Court, proximate to the case on hand, or to

keep the appeals pending, till the final outcome of the issues raised.

6. Placing on record the submissions of both the parties, orders impugned in C.M.A.Nos.1046 and 1093 of 2018, are set aside. The matters are remitted to CESTAT, Madras. Accordingly, as consented by parties, a direction is issued to the Tribunal.

7. With the above direction, the Civil Miscellaneous Appeals are disposed of. No Costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

dm
To

1.The Commissioner of GST & Central Excise,
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai - 600 035.

2.The Commissioner of Central Excise,
Puducherry Commissionerate,
Beach Road,
Puducherry - 605001.

3. The Customs Excise Service Tax
Appellate Tribunal, South Zonal Bench
26, Haddows Road
Chennai 600 006.

+1 CC to Mr.Lakshminarayanan, Advocate sr 38979.
+1 CC to Mr. Aparna Nandakumar, Advocate sr 38968.
+1 CC to Mr.V. Sundareswaran, Advocate sr 38980.
+1 CC to Mr.K. Jayachandran, Advocate sr 38751.

C.M.A..Nos.1093 and 1046 of 2018

NMI(CO)
SP(17/07/2018)