In the High Court of Judicature at Madras

Dated : 26.9.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1217 of 2007 & MP.No.1 of 2007

The Commissioner of Central
Excise, Chennai-34. ..Appellant
Vs

1.M/s.Sundar & Company, Chennai-1.

2.The Customs, Excise and Service Tax
Appellate Tribunal, South Zonal
Bench, No.26, Haddows Road,
Chennai-6. ...Respondents

APPEAL under Section 35G of the Central Excise Act, 1944 against final order Nos.1087 of 2005 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai dated 05.8.2005.

For Appellant : Mr.A.P.Srinivas, SSC
For Respondent-1 : No appearance

Judgment was delivered by T.S.SIVAGNANAM,J
The appeal by the Revenue has been directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 05.8.2005. The appeal has been admitted on 03.7.2007 on the following substantial questions of law :
(2)
i Whether the manufacturer, who paid the amount on non dutiable goods, by mistake of law, failed to claim the refund within three years from the date of knowledge of the mistake, whether the refund could be granted to a third party buyer of the said non dutiable goods, based on the refund claim filed by the buyer ? and
ii. Whether the amount paid on non dutiable goods by mistake of law by a manufacturer by way of debit in CENVAT account could be refunded in cash to the buyer of the said non dutiable goods, who is neither a manufacturer of any excisable goods nor a person maintaining a CENVAT account, based on the refund claim filed by the buyer?
2. The learned Senior Standing Counsel for the appellant seeks permission to withdraw the above appeal based on the Board's monetary policy circular. He would submit that on account of the monetary limit in this appeal, which is lesser than the threshold fixed by the Board's circular dated 11.7.2018, he has been instructed to withdraw the appeal. He has also made an endorsement in the

bundle today to that effect.
3. The said submission of the learned Senior Standing Counsel for the Revenue is placed on record. The above civil miscellaneous appeal is dismissed as withdrawn and the substantial questions of law framed in this appeal are left open.

26.9.2018
RS

T.S.SIVAGNANAM,J
AND
V.BHAVANI SUBBAROYAN,J

RS
Internet : Yes

To
The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench,
No.26, Sastri Bhavan Annexe Building, Haddows Road, Chennai-6.

CMA.No.1217 of 2007
and MP.No.1 of 2007

26.9.2018