IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

CMA No.1576 of 2018

The Commissioner of Central Excise
& Service Tax,
6/7, ATD Street,
Race Course Road,
Coimbatore. ... Appellant/Respondent

Vs

Adwaith Textiles Ltd.,
Senthotham, Sowripalayam,
Coimbatore - 641 028. ... Respondent/Appellant

Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act, 1944, against the Final Order No.41986 of 2016 dated 20.10.2016 on the file of the Customs Excise and Service Tax Appellate Tribunal, Chennai.

For appellant : Mr.A.P.Srinivas
Standing Counsel

J U D G M E N T
(Judgment of the Court was made by S.MANIKUMAR, J)

Instant Civil Miscellaneous Appeal is filed against the Final Order No.41986 of 2016 dated 20.10.2016, on the file of the Customs Excise and Service Tax Appellate Tribunal, Chennai, on the following substantial questions of law:

> "1. Whether on the facts and circumstances of the case the Tribunal was right in law to waive the penalty imposed under Section 78 of the Finance Act 1994 especially when it had upheld the imposition of the penalty in its previous final order 40993/2015 dated 13.08.2015 on the same issue.

2. Whether on the facts and circumstances of the case the Tribunal was right in law to decide and pass the final order number 41986/2016 dated 21.10.2016 especially when the doctrine of the merger mandates otherwise."

2. Impugned order reads thus:

"Both sides are in agreement as to discharge of tax liability. The only agitation of the appellant is that due to misconstruction of law there was levy of penalty. Considering the difficulty in interpretation as to law determining tax liability, levy of penalty would be unjustified, that is waived. Appeal is allowed only to this extent."

3. On this day when the matter came up for hearing, Mr.A.P.Srinivas, learned counsel for the appellant submitted that on the basis of the instructions, issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs (Judicial Cell), dated 11.07.2018, the Commissioner of Central Excise & Service tax, Coimbatore, appellant herein, has instructed him to withdraw the appeal. He has also made an endorsement to that effect. Instructions dated 11.07.2018 is reproduced hereunder:

Subject: Reduction of Government Litigation - Raising of monetary limits for filing appeals by the Department before CESTAT/ High Courts and Supreme Court in Legacy Central Excise and Service Tax : regarding.

In excise of the powers conferred by Section 35R of the Central Excise Act, 1944 made application to Service Tax vide Section 83 of the Finance Act, 1944, the Central Board of Indirect Taxes and Customs fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High and Supreme Court:

S. No.	Appellate Forum	Monetary Limit
1	CESTAT	Rs.20,00,000/-
2	High Courts	Rs.50,00,000/-
3	Supreme Courts	Rs.1,00,00,000/-

2. This instruction applies only to legacy issues i.e. Matters relating to Central Excise and Service Tax, and will apply to pending cases as well.

3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits will follow the current practice that is being followed for the withdrawal of cases from the High Courts, CESTAT and Commissioner (Appeals). All other terms and conditions of concerned earlier instructions will continue to apply.

4. It may be noted that issues involving substantial questions of law as described in para 1.3 of the Instruction dated 17.08.2011 from F.No.390/Misc/163/2010-JC would be contested irrespective of the prescribed monetary limits.

5. Since withdrawal of Departmental Appeals is a long drawn activity requiring routine and constant monitoring, formats have been introduced in the Monthly Performance Report for all field formations to send monthly reports regarding status of withdrawal of appeals in the MPR (refer table M/ M-1). Details of the said cases should also be available in a separate register for further perusal by the Board as and when required. Tables are in the Annexure – A attached. The description of the Tables in brief is provided below:

a) Table M: Position of withdrawal with reference to raised monetary limits SC/HC/CESTAT (as per instruction dated 11.07.2018)

b) Table M-1: Remaining to be filed/withdrawn SC/HC/CESTAT.

Table M

Position of cases wrt Raised Monetary limits (as per instruction - 11.07.2018)

As on (Last working day)

Position of withdrawal in Departmental Cases raised monetary limits SC 25Lakhs -1Crores)/ HC 20-50 Lakhs/ CESTAT 10-20 Lakhs				
S. No.	I. Zones (in alphabetical order)	II. Identified	III. Filed	IV. Withdrawn

Position of withdrawal in Departmental Cases raised monetary limits SC 25Lakhs -1Crores)/ HC 20-50 Lakhs/ CESTAT 10-20 Lakhs													
		SC	HC	CESTAT	Total	SC	HC	CESTAT	Total	SC	HC	CESTAT	Total
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)

Table M-1
Cases remaining to be filed/ withdrawn
(as per instruction - 11.07.2018)

As on (Last working day)

Remaining to be Filed/ Withdrawn									
S.No.	I. Zones (in alphabetical order)	I. Remaining to be filed*				II. Remaining to be withdrawn**			
		SC	HC	CESTAT	Total	SC	HC	CESTAT	Total
		(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)

*Identified minus filed in Table M
**filed minus withdrawn in Table M

4. Placing on record the above, while dismissing the Civil Miscellaneous Appeal, as withdrawn, substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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TO
1 THE REGISTRAR
CUSTOMS EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI.

2 THE COMMISSIONER OF CENTRAL
EXCISE AND SERVICE TAX,
6/7,ATC STREET, RACE CROSE ROAD,
COIMBATORE.

+1cc to Mr.A.P.SRINIVAS, Advocate, S.R.No. 52557

CMA No.1576 of 2018

NMI(CO)
TR(28/08/2018)