IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Civil Miscellaneous Appeal No.1649 of 2018

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

Vs

M/s. R S Development and Constructions
India P Ltd.,
No.567, 17th street, 4th Sector,
K K Nagar,
Chennai - 600 078 ... Respondent

Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act, read with Section 83 of Finance Act, 1944, against the Final Order No.41140 of 2017, dated 05.07.2017, on the file of the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant ... Mr.V.Sundareswaran

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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.41140 of 2017, dated 05.07.2017, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, on the following substantial questions of law:

> "1. Whether the Tribunal is right in setting aside the penalty imposed under Section 76 of the Finance Act, 1994, on the grounds that there was no

fraud, willful misstatement or suppression of fact, when there is no express provision under Section 76 requiring any such act to be committed for imposition of penalty under the said Section?

2. Whether the Tribunal is right in setting aside the penalty imposed under Section 76 without taking cognizance of the period involved in the present case when after the amendment made with effect from 18.04.2006, the penalty prescribed under Section 76 of the Finance Act, 1994, has become mandatory?

3. Whether the Tribunal is right in setting the penalty aside by ignoring the fact that assessee has continually failed to pay the service tax collected from their customers to the Government and the liability was recovered by the department by initiating action under Section 87?

2. On this day, when the matter came up for hearing, on the basis of instructions, issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs (Judicial Cell), dated 11.07.2018, Mr. V. Sundareswaran, learned Senior panel counsel for the Customs, Excise and Service Tax Department submitted that the appellant has instructed him to withdraw the Civil Miscellaneous appeal and he has also made an endorsement to that effect. Instructions, issued by the Ministry of Finance, 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			
		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

3. Learned counsel for the appellant has also made an endorsement to that effect.

4. Placing on record the above submission, Civil Miscellaneous Appeal No.1649 of 2018 is dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsi/mvs.

To

1. The Customs Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.51587

Civil Miscellaneous Appeal No.1649 of 2018

SPD(CO)
CS/11/08/18