IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. No.2639 of 2015
and
M.P.No.1 of 2015

The Commissioner of Central Excise
Chennai II Commissionerate,
M.H.U.Complex,
No.692, Anna Salai,
Nandanam,
Chennai-600 035 ... Appellant

-vs-

1.The Customs Excise and Service
Tax Appellate Tribunal,
South Zone Bench,
Shastri Bhavan Annex 1st Floor,
26, Haddows Road,
Chennai-600 006

2.M/s.Kores India Ltd.,
Post Box No.4506,
No.191, Mount Road,
Chennai-600 002
Tamil Nadu ... Respondents

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order No.40226 of 2015 dated 06.03.2015, on the file of the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

For Appellant : Mr.B.Rabu Manohar

For Respondent : Mr.J.Shankar Raman

J U D G M E N T

[Judgement of the Court was Delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue, filed under Section 35-G of the Central Excise Act, 1944, is directed against the final order passed by the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 06.03.2015.

2.Heard Mr.B.Rabu Manohar, learned Counsel for the Appellant and Mr.J.Shankar Raman, learned counsel, for the Respondent.

3.This Appeal has been admitted, vide order dated 03.12.2015, on the following Substantial Questions of Law:

> "(a)Whether the order passed by the CESTAT, Chennai, is tenable in holding that where the duty determined to be payable in adjudication under Section 11A(2) of the Central Excise Act, 1944, is reduced by the Tribunal, interest under Section 11AA of Central Excise Act, 1944, is payable from the date of decision taken by the Tribunal, whereas, as per explanation 1 of the Section 11AA (for interest on delayed payment of duty) provides that date of duty determination shall be the date on which an amount of duty is first determined to be payable?
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> 2.Whether the CESTAT Chennai is correct in reversing order in terms of the provisions under Section 11A(2), the adjudicating authority determines the duty payable. The duty liability arises from the date on which duty payable is determined by the original adjudicating authorities. Section 11AA charges interest on duty liability, on expiry of three months period starting from the date of such determination. In terms of Explanation 1 to Section 11AA, where duty determined to be payable is reduced by Appellate Tribunal, the date of such determination shall be the date on which an amount of duty is first determined to be payable?

4.It may not be necessary for this Court to examine the correctness of the decision of the Tribunal or to answer the Substantial Questions of Law, in the light of the low tax effect in this appeal. The Central Board of Direct Taxes, vide

Circular No.3 of 2018, dated 11.7.2018, has directed that appeals shall not be filed before this Court, where the tax effect does not exceed the monetary limit of Rs.50 lakhs. The said Circular has been made applicable to pending matters as well.

5.In the light of the Circular, the Revenue cannot pursue this appeal. The Revenue does not dispute the fact that the tax effect involved in this appeal is less than the threshold limit mentioned in Circular No.3 of 2018.

6.In view of the above, the appeal, filed by the Revenue, is dismissed on the ground of low tax effect and the Substantial Questions of Law framed for consideration are left open. We grant liberty to the appellant/Revenue to seek for restoration of this appeal in the event it is later than found that the tax effect in this appeal is above the threshold limit fixed in Circular No.3 of 2018. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk

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

2. The Commissioner of Central Excise Chennai-II, Commissionerate M.H.U. Complex, No.692, Anna Salai, Nandanam,Chennaia-35.

+ 1 cc to Mr. B. Rabu Manohar, Advocate Sr.69219

C.M.A.No.2639 of 2015

SS(CO)
EU(02/11/2018)