In the High Court of Judicature at Madras

Dated : 14.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1818 of 2018 & CMP.No.14051 of 2018

The Commissioner of GST and
Central Excise, O/o.Commissioner of GST & Central Excise,
Commissionerate,
Chennai-40.

(cause title accepted vide order dated 23.2.2018 made in CMP.No.3601 of 2018 in CMA.SR.No.99452 of 2017 by SMKJ and VBSJ)

...Appellant

Vs

M/s.Woosu Automotive India Pvt. Ltd., Tiruvallur Taluk District 631402. ...Respondent

APPEAL under Section 35(G) of the Central Excise Act, 1944 read with Section 86(7) of the Finance Act against final order No.40705 of 2017 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench in Appeal No.E/41899/2016-SM dated 16.5.2017 preferred against the order dt.12/07/16 in Appeal No.139/16(IXA-1)(CH-I) by the Commissioner of central Excise (Appeals-I) Chennai 34 which was preferred against the order dt.09/07/2005 in order in Original No.9/2015 ® by the Assistant Commissioner of Central Excise Teynampet, Chennai 18.

For Appellant: Mr.A.P.Srinivas for Mr.Rajnish Pathiyil

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned counsel for the appellant.

2. This appeal by the Revenue is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 16.5.2017 raising the following substantial questions of law :

"i. Whether the Tribunal is correct in holding that the principal manufacturer is not liable for payment of duty on scrap arising at the site of the job worker contrary to the provisions contained in Rule 4(5)(A) of the CENVAT Credit Rules, 2004 ?

ii. Has not the Tribunal fallen in error in replying upon the decision of the High Court of Bombay when an appeal arising out of orders of the Customs, Excise and Service Tax Appellate Tribunal, Delhi on the very same issue, is pending before the Hon'ble Supreme Court ?

iii. Is not the Tribunal incorrect in having held that the respondent/assessee is entitled for refund when the respondent/assessee itself had admitted to the duty liability and paid it earlier and that too without any protest ? And

iv. Has not the Tribunal committed an error in shifting the onus from that of the assessee to the appellant, as contained in Rule 4(5)(a) read with Rule 4(6), which mandates that it is the principal manufacturer, who has to establish that the scrap, which has arisen during the course of manufacture at the premises of job worker has suffered duty?"

3. The learned counsel for the appellant has placed before this Court a communication sent by the Assistant Commissioner (Legal), Office of the Commissioner of GST and Central Excise, Chennai Outer, dated 07.8.2018 stating 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 seeks permission to withdraw the appeal.

4. The communication dated 07.8.2018 is placed on record and this civil miscellaneous appeal is dismissed as withdrawn and the substantial questions of law raised in this appeal are left open. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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

2.The Commissioner of GST and Central Excise
O/o commissioner of GST & Central Excise,
Commissionerate, Chennai 40.

3.The Commissioner of Central Excise(Appeals I)
Chennai 34

4.The Assistant Commissioner of Central Excise,
Teynampet, Chennai 18

+1cc to M/s.Rajnish Pathiyil, Advocate SR.NO.55883

TM(CO)
sm:11.9.2018

CMA.No.1818 of 2018&
CMP.No.14051 of 2018