In the High Court of Judicature at Madras

Dated : 31.8.2018

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1480 of 2017

The Commissioner of Central Excise
and Service Tax, Large Tax Payer
Unit, Chennai-101. ...Appellant

Vs

M/s.Tamil Nadu Petroproducts Ltd.,
Manali Express Highway, Manali,
Chennai-68. ...Respondent

APPEAL under Section 35G of the Central Excise Act, 1944 against the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.40097 of 2015 in Appeal No.E/1008/2004- SM dated 06.2.2015.

For Appellant : Mr.A.P.Srinivas, SSC
For Respondent :Mr.K.Narayanan for Mr.N.Prasad

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.40097 of 2015 dated 06.2.2015 raising the following substantial questions of law:-

> "1. Whether the Tribunal was correct in imposing a penalty less than the amount of duty/ credit demanded under Section 11AC of the Central Excise Act, 1944/Rule 571(4) of the Central Excise Rules, 1944 when there is no discretion to impose a lower penalty as per the Hon'ble Supreme

Court judgments in the case of Dharmendra Textile Processors [reported in (2008) 231 ELT 3] and Rajasthan Spinning and Weaving Mills [reported in (2009) 238 ELT 3] ?

2. Whether the Tribunal is correct in holding that interest is not leviable under Rule 571(5) of the Central Excise Rules, 1944 when it upheld that penalty is impossible under Section 11AC of the Central Excise Act, 1944 ?

3. Whether the Tribunal is right in deleting interest when the payment of interest is compensatory to the loss of revenue in time and no discretion is available under the Central Excise Act to dispense with the same ? And

4. Whether the Tribunal is correct in holding that penalty is not impossible under Rule 173Q of the Central Excise Rules, 1944 without entering any finding to justify the same ?"

2. It may not be necessary for this Court to examine the above substantial questions of law, in the light of the fact that the tax involved in the instant case, which is in the nature of duty, is less than the threshold limit fixed by the Central Board of Indirect Taxes and Customs vide instruction dated 11.7.2018. In fact, wherever cases are less than the monetary limit of Rs.50,00,000/-, in so far as High Courts are concerned, the Department has been directed not to pursue the appeal or even withdraw the same. Further, in this regard, there are no specific written instructions to the learned Senior Standing Counsel for the Revenue.

3. Be that as it may, it is seen that the appeal has been filed by the Revenue, which arose out of an order passed by the Tribunal dated 06.2.2015. The Original Authority raised a demand of Rs.12,36,375/- towards MODVAT credit wrongly availed by the assessee apart from imposing penalty equivalent to the said amount. Thus, the monetary limit, involved in the instant case, being well below the amount fixed in the instruction dated 11.7.2018, we hold that the Department cannot pursue this appeal.

4. Hence, for this reason alone, the above civil miscellaneous appeal stands dismissed and the substantial questions of law are left open for consideration. No costs.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Central Excise
and Service Tax, Large Tax Payer Unit,
1775 ,Jawaharlal Nehru,
Chennai-101.

+1cc to Mr.N.Inbarajan , Advocate SR.No. 60323
+1cc to Mr.A.P.Srinivas, SSC SR.No. 60045

CMA.No.1480 of 2017

ASK(24/10/2018)