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.1879 of 2018

The Commissioner of Central Excise
and Service Tax, Office of the
Commissioner of Central Excise,
Customs & Service Tax, 6/7,
A.T.D.Street, Race Course Road,
Coimbatore-18.
...Appellant/Respondent

Vs

M/s.Dresser Valves India Private
Limited, Coimbatore.
...Respondent/Appellant

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.41884 of 2016 dated 13.10.2016.

For Appellant : Mr.A.P.Srinivas, SSC

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.41884 of 2016 dated 13.10.2016 raising the following substantial questions of law:-

> "1. Whether, on the facts and circumstances of the case, the Tribunal was right in law to allow credit based on ineligible documents overriding the express provisions of Rule 9 of the CENVAT Credit

Rules, 2004, as it stood during the period of the dispute ? and

2. Whether, on the facts and the circumstances of the case, can the Tribunal consider the issues, which were not a part of show cause notice and never considered by the Original Authority to hold against the Department by giving a totally new finding ? ”

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 13.10.2016. The Original Authority sought to recover the CENVAT credit availed by the assessee to the tune of Rs.47,20,907/- together with interest while imposing penalty equivalent to the amount sought to be recovered as CENVAT credit availed. 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.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

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

2.The Additional Commissioner of Central Excise
and Service Tax, Office of the
Commissioner of Central Excise,
Customs & Service Tax, 6/7,
A.T.D.Street, Race Course Road,
Coimbatore-18.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.60046

CMA.No.1879 of 2018

GMI(CO)
GSP(17/10/2018)