IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

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

Civil Miscellaneous Appeal No.2256 of 2016

The Commissioner of Central Excise
and Service Tax, Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai-600 101.
.. Appellant .

Vs.

Rane Madras Ltd.,
154, Velacherry Main Road,
Velacherry,
Chennai-600 032. .. Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 35 of Central Excise Act against the Final Order No.40475/2016, dated 10.03.2016, received on 30.03.2016 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.A.P.Srinivas
Senior Standing Counsel

For Respondent : Mr.S.Jaikumar

J U D G M E N T

[Judgement of the Court 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.40475/2016, dated 10.03.2016.

2.This appeal has been admitted vide order dated 16.08.2017 on the following substantial questions of law:

"1. Whether the CESTAT is empowered to grant waiver of penalty imposed under Section 11 AC ibid when the demand issued by invoking Section 11A(4) of Central Excise Act, 1944 is upheld ?

2. Whether the CESTAT is correct in waiving the penalty when the reversal of duty by the assessee was much later after the department's inspection only?”

3. 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 is less than the threshold limit fixed by the Central Board of Indirect Taxes and Customs, vide instruction dated 11.07.2018. In fact, wherever cases are less than the monetary limit of Rs.50,00,000/-, insofar as High Courts are concerned, the Department was directed not to pursue the appeal or even withdraw the same. Further, in this regard, there is no specific written instructions to the learned Senior Standing Counsel for the Revenue.

4. Be that as it may, it is seen that the appeal has been filed by the Revenue, which arose out of a order passed by the Commissioner on 25.02.2013. The Department was aggrieved by the order of the Tribunal, insofar as the allowing the appeal qua the penalty is concerned. The monetary limit, involved in the instant case, being well below the amount fixed in the instruction dated 11.07.2018, we hold that the Department cannot proceed with this appeal. Hence, for this reason alone, the appeal stands dismissed and the substantial questions of law are left open for consideration. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road, Chennai - 600 006.

2.The Commissioner of central,
Excise and service Tax, Large Taxpayer
Unit,1775 Jawaharlal Nehru Innerring Road,
Anna Nagar Western Extn., Chennai-101

3.The Section Officer,
Vr Section, High Court, Madras.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.59029

+1cc to Mr.S.Jaikumar, Advocate, S.R.No.58695

KK(CO)
GSP(15/10/2018)