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.2384 of 2016 &
CMP.No.16602 of 2016

The Commissioner of Customs
& Central Excise, Salem. ...Appellant

Vs

1.SESA Sterlite Ltd., formerly The
Madras Aluminium Co. Ltd.,
Mettur Dam, Salem-636402.

2.The Customs, Excise and Service
Tax Appellate Tribunal (CESTAT),
South Zonal Bench, Shastri
Bhawan Annexe I Floor, No.26,
Haddows Road, Chennai-6. ...Respondents

APPEAL under Section 35G of the Central Excise Act, 1944 against final order No.40111 of 2015 in Appeal No.E/41192/2014-SM on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai dated 30.1.2015.

For Appellant : Mr.V.Sundareswaran
Respondent-1 : Not ready in Notice

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned counsel for the appellant.

2. This appeal by the Revenue has been directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 30.1.2015. This appeal has been admitted on 04.11.2016 on the following substantial questions of law :

> "i. Whether, in the facts and circumstances of the case, the refund made by the Department pursuant to the direction issued by this Court, which direction was

subsequently reversed by the Supreme Court by the judgment rendered on 03.12.1996 in Civil Appeal Nos.2896 to 2900 of 1984 preferred by the Department amounts to erroneous refund or not ? If so, whether interest is also liable to be paid thereon while restoring the refunded amount ? And

2. When restoration of refunded amount is made pursuant to the order passed by the Supreme Court on 03.12.1996, what would be the starting point for commencement of the period of limitation for recovery of arrears by the Department?"

3. The learned Standing Counsel for the appellant had given a letter dated 23.8.2018 to the Registry seeking to list the above appeal for withdrawal based on a communication sent to him by the Deputy Commissioner (Legal), Office of the Commissioner of GST and Central Excise, Salem dated 17.8.2018 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, the learned Standing Counsel has been instructed to do the needful to withdraw the appeal.

4. The communication dated 17.8.2018 and the letter given by the learned Standing Counsel for the appellant dated 23.8.2018 are placed on record and this civil miscellaneous appeal is dismissed as withdrawn and the substantial questions of law in this appeal are left open. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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

+1cc to Mr.V.Sundareswaran, Advocate sr.no.60262

CMA.No.2384 of 2016&
CMP.No.16602 of 2016

vsnii(co)
nr 26/09/2018