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.2423 of 2016

The Commissioner of Central Excise, Salem-1. ... Appellant/ Appellant

Vs

M/s.Sona Rajendra Spinners Pvt. Ltd., Salem-637504. ... Respondent/ 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.41796 of 2015 dated 22.9.2015.

For Appellant : Mr.V.Sundareswaran, SSC
For Respondent : Ms.Nivedita Mehta for M/s.L.Maithili Associates

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.41796 of 2015 dated 22.9.2015.

2. The above appeal has been admitted on 04.11.2016 on the following substantial questions of law:-

> "1. Whether Rule 8(3A) of the Central Excise Rules, 2002 is unconstitutional or not ? And
> 2. Whether levy and collection of interest and penalty can be waived depending upon the conduct or bona fides of the party ?"

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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, 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.

4. 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 22.9.2015. The Original Authority imposed central excise duty on the assessee to the tune of Rs.10,64,750/- together with interest apart from imposing penalty equivalent to the said amount. Thus, the monetary limit involved herein being well below the amount fixed in the instruction dated 11.7.2018, we hold that the Department cannot pursue this appeal.

5. 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

RS

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

2.The Section Officer, V.R.Section,
High Court,Madras.(2 copies)

+1cc to Mr.V.Sundareswaran, Advocate SR.No.60263

CMA.No.2423 of 2016

KK(CO)
RMP(20/09/2018)

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