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.2690 of 2016
& CMP.No.19306 of 2016

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

Vs

1. M/s.The Madras Aluminium Co. Ltd. (now kwown as SESA Sterlite Ltd.), Mettur Dam, Salem-636402.

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

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.40125/2016 in Appeal No.E/41187/2014 dated 27.1.2016.

For Appellant : Mr.S.Rajasekar
Respondent-1 : Not ready in notice

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.40125/2016 dated 27.1.2016.

2. The above appeal has been admitted on 15.12.2016 on the following substantial questions of law:-

> "1. 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. 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 interest on the erroneously refunded amount, 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 28.1.2016. The Original Authority imposed interest to the tune of Rs.34,25,275/- on the erroneously refunded amount of Rs.22,06,397/- from 26.8.1995 onwards. 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 is dismissed and the substantial questions of law are left open for consideration. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

RS

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

+1cc to Mr.S.Rajasekar, Advocate SR.No.60306

CMA.No.2690 of 2016&
CMP.No.19306 of 2016

KS(CO)
RMP(24/09/2018)