In the High Court of Judicature at Madras

Dated : 14.9.2018

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The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1899 of 2017

The Commissioner of Service
Tax, Chennai-40. ...Appellant

Vs

M/s.Unicorn Services, Chennai-34. ...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.41912 of 2016 in Appeal No.ST/40521/ 2016-SM dated 21.10.2016.

For Appellant : Mrs.Hema Muralikrishnan, SSC
Respondent : Not ready in notice

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue has been directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.41912 of 2016 dated 21.10.2016 raising the following substantial questions of law:-

> "i. Whether, in the facts and circumstances of the case, the Tribunal is correct and justified in passing a non speaking order without adverting to the facts of the case and the provisions of law governing the case ?
>
> ii. Whether, in the facts and circumstances of the case, the Tribunal is correct in granting the benefit of the Second Proviso to Section 78(1) of the Finance Act, 1994 when the condition stipulated therein has not been fulfilled by the respondent herein in as much as the respondent herein failed to pay the interest on the service tax confirmed within 30 days

from the date of receipt of the Order in Original ? and

iii. Whether, in the facts and circumstances of the case, the Tribunal is correct in granting the benefit of the Second Proviso to Section 78(1) of the Finance Act, 1994 without taking note of the judgment of the Supreme Court in the case of Rajshree Dyeing & Printing Mills (P) Ltd. Vs. Commissioner [reported in (2016) 331 ELT A132]?"

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 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 21.10.2016. The Original Authority raised a demand of Rs.28,89,891/- towards service tax liability apart from levying interest and penalty equivalent to the said amount. 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 IX)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mrs.Hema Muralikrishnan, Advocate sr.no.63751

CMA.No.1899 of 2017

sai(co)
nr 11/10/2018