IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

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

Civil Miscellaneous Appeal No.2603 of 2017

Commissioner of Customs,
Custom House, Chennai ... Appellant

-vs-

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

2.M/s.The Sandur Manganese & Iron Ores Ltd.,
Regd. Office Lakshmipura,
Sandur - 573 119, Bellary (District). ... Respondent

Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962 against the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.112 of 2007 dated 08.02.2007.

Final Order No.112 of 2007 dated 08/02/2007 on the file of the CESTAT,South Zonal Bench,Chennai against the office of the collector of customs and central Excise (Appeals) Custom House, Madras - 600 001, against the Assistant Collector of Customs, Customs House,Visakhapatnam, Order No.S8/(a)/266/86-AP / No.S9/65/87-AP Dated 01/09/1988.

For Appellant : Mrs. R. Hemalatha,
Senior Standing Counsel

For Respondent-1 : Mr. Narayanan,
for Mr. N. Prasad

JUDGMENT
[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.112 of 2007 dated 08.02.2007.

2.This appeal has been filed raising the following substantial questions of law:-

"a) Whether the Hon'ble CESTAT is justified in holding that the date of payment of duty on provisional assessment should be treated as the relevant date for purpose of Section 28(3)(d) of the Customs Act, 1962 when the goods were assessed provisionally under Sec.18 of the Act?

b) Whether the Hon'ble CESTAT is right in law in interpreting the words "the date of adjustment of duty" in the Section 28 as some duty has to be adjusted after the final assessment thereof?

c) Whether the CESTAT is correct in curtailing the period of limitation provided under the provisions of Sec.28(3)(b) of the Customs Act, 1962 on wrong interpretation?"

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 11.07.2018. 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 common order passed by the Assistant Collector on 11.10.1988. The Department was aggrieved by the order of the Tribunal, insofar as the duty to the tune of Rs.15,22,741/- is concerned. The other amount, which was demanded viz., Rs.74,44,562/- is concerned, it is submitted by the learned counsel for the Department that the assessee has not preferred any appeal. Thus, 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-IV)

// True Copy//

Sub Assistant Registrar

abr

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 Collector of Customs and Central Excise(Appeals)
Customs House, Madras-600 001.

3.The Collector of Customs,
Visakhapatnam.

4.The Asst.Collector of Customs,
Customs House, Visakhapatnam.

+1cc to Mr.N.Inbarajan, Advocate SR.No.58223

C.M.A.No.2603 of 2017

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