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.2646 of 2017
and
Civil Miscellaneous Petition No.14598 of 2017

Commissioner of Central Excise,
O/o the Commissioner of Central Excise,
Customs & Service Tax,
6/7, A.T.D.Street, Race Course Road,
Coimbatore. ... Appellant

-vs-

1.M/s.Needle Industries India Pvt Ltd.,
Post Office-643 243,
Ketty, Nilgiris-643 243, Tamil Nadu.

2.The Customs, Excise & Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhawan Annexe I,
I Floor, 26, Haddows Road,
Chennai-600 006. ... Respondents

Civil Miscellaneous Appeal filed under Section 35 G of the Central Excise Act, 1944 to set aside the Final Order No.41379/2015 dated 09.10.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai against the Commissioner of Customs and Central Excise(Appeals) No.1, Falk's Compound, Annaimedu, Salem 636 001 in Appeal No.83/2010 dated 23.06.2010 against the office of the Deputy Commissioner of Central Excise, Connor Division , 28-2/129C, Karumadai Road, Mettupalayam in C.No.V/ch 76/18/49/2009-Refund (S.Tax) dated 07.10.2009.

For Appellant : Mr.A.P.Srinivas,
Senior Standing Counsel

For Respondent-1: Mr.T.R.Mohan

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, (in short, “the Tribunal”) South Zonal Bench, Chennai, in Final Order No.41379/2015 dated 09.10.2015.

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

> “(i) Whether in the facts and circumstances of the case, the Hon'ble CESTAT is correct in holding that the benefit of Notification No.33/2018 ST dated 07.12.2008 is retrospective in nature to extend benefits thereof to the claimant in the absence of any explanatory or clarificatory clause in the said Notification?
>
> (ii) Whether in the facts and circumstances of the case, the Hon'ble CESTAT was correct in not restricting the claim by applying the underlying rationale that benefit of the enhanced rate specified by virtue of amendment of Notfn.no 41/2007-S.T. by Notification No.33/2008 ST dated 07.12.2008 can only be extended prospectively?”

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 against the order of the Tribunal. The Department was aggrieved by the order of the Tribunal, insofar as the refund of duty to the tune of Rs.4,99,709/- is concerned. The other amount, which was claimed viz., Rs.5,05,714/- is concerned, it is submitted by the learned counsel for the Department that they have 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. Consequently, connected civil miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

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

2.The Deputy Commissioner,
O/o. The Deputy Commissioner of Central Excise,
Coonoor Division 28-2-129C Karamadai Road,
Mettupalayam.

3.The Commissioner (Appeals),
O/o. The Commissioner of Customs and Central Excise (Appeals),
No.1, Foulk's Compound, Annai Medu, Salem-636 001.

+1 CC to Mr.A.P. Srinivas, Advocate sr 58164.
+1 CC to Mr.T.R. Mohan, Advocate sr 58615.

C.M.A.No.2646 of 2017

RJI(CO)
SP(27/09/2018)