IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM :

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

Civil Miscellaneous Appeal No.468 of 2017

The Principal Commissioner of Service Excise,
Newry Towers, Plot No.2054,
I Block, 2nd Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040. .. Appellant

Vs.

GRR Logistics P Ltd.,
No.85, GNT Road,
Madhavaram,
Chennai-600 010. .. Respondent

* * *

Prayer : Civil Miscellaneous Appeal filed under Section 35 of Central Excise Act against the Final Order No.40865/2016, dated 31.05.2016, received on 20.06.2016 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

* * *

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

For Respondent : Mr.Joseph Prabhakar

J U D G M E N T

[Judgement of the Court 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.40865/2016, dated 31.05.2016.

2.This appeal has been admitted vide order dated 16.08.2017 on the following substantial questions of law:

"1. Whether the CESTAT is right in holding that the penalty is not imposable under Section 78 of the Finance Act, 1994, admittedly, when the assessee had collected the service tax amount from customers and not deposited to the Government ?

2. Whether the CESTAT is right in holding that the ingredients to attract Section 78 of the Finance Act, 1994, have not been stated in the show cause notice, when the suppression by the assessee and invocation of extended period of limitation is clearly stated in the show cause notice ?”

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 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 order passed by the Additional Commissioner on 05.09.2011. The Department was aggrieved by the order of the Tribunal, insofar as the allowing the appeal qua the penalty is concerned. 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(CO)

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Sub Assistant Registrar

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To

The Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road, Chennai - 600 006.
+1cc to Mr.A.P.Srinivas , Advocate SR.No. 59028

C.M.A.No.468 of 2017

ASK(26/10/2018)