IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.M.A.No.3114 of 2010

The Commissioner of Central Excise,
Chennai IV Commissionerate,
692, MHU Complex,
Nandanam, Chennai - 600 035. .. Appellant

Vs.

M/s.Indian Terrain Clothing Private Limited,
Thirumurugan Nagar,
Shanthi Complex,
Porur,
Chennai - 600 116. .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act, 1944, against the Final Order No.357 of 2010, dated 24.03.2010, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench.

For Appellant : Mr.Rajasekar
Junior Standing Counsel (C & CE)

For Respondent : No Appearance

JUDGMENT
(Judgment of this Court was made by S.MANIKUMAR, J.)

Being aggrieved by the Final Order No.357 of 2010, dated 24.03.2010, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, instant Civil Miscellaneous Appeal has been filed on the following substantial questions of law:-

> "(i) Whether the Hon'ble CESTAT, Chennai was correct in passing its Final Order No 357/2010 dated 24.03.2010 in favour of the assessee by upholding the decision of the lower appellate authority allowing the refund equal to deemed credit of 20% when the conditions imposed in the Notification No 54/2001 is

not fulfilled?

(ii) The Tribunal being creation of the Statute, whether refund can be ordered in respect of allowing deemed credit when there are no express provisions under the Central Excise Act, 1944 and the rules made there under is available.

(iii) Whether the Hon'ble Tribunal was correct in ignoring the question of unjust enrichment raised in the order passed by the Original Adjudicating Authority ignoring the provisions of Section 11 B?"

2. Record of proceedings shows that appeal has been admitted and notice has been ordered on 18.11.2010. Notice taken by the appellant has been returned in the year 2010, with postal endorsement "No such Company in the address. Returned to the sender".

3. As per the registry's note, second batta with petition is due on service to the sole respondent. More than 7 years have lapsed, since the return of notice.

4. Perusal of the material on record, discloses that the lis is for refund of claim of Rs.2,28,907/- to M/s.Indian Terrain Clothing (P) Ltd., Porur, Chennai.

5. The instruction of the Ministry of Finance, dated 30.12.2016, is extracted hereunder:-

F.No.390/Misc./163/2010-JC/Pt
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi, 30th December, 2016

INSTRUCTION

To

1. All Principal Chief Commissioners/ Chief Commissioners and Directors General under the Central Board of Excise and Customs.

2. Chief Commissioner (AR), All Commissioners (AR), Customs, Excise & Service Tax Appellate Tribunal.

3. All Principal Commissioners / Commissioners of Customs / Central Excise / Service Tax / Commissioner, Directorate of Legal Affairs.

4. cbec@icegate.gove.in

Sir/Madam,

Sub: - Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT - regarding.

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and Section 131 BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F.No.390/Misc./163/2010-JC dated 17.12.2015, Central Board of Excise & Customs fixes the monetary limit below which appeal shall not be filed in the High Court as Rs.20,00,000/-.

2. Except for the above all other terms and conditions of earlier instructions dated 17.8.2011 & 17.12.2015 stands.

(Anuj Agarwal)
Officer in Special Duty-Judicial Cell

6. In view of the above policy, the Civil Miscellaneous Appeal is dismissed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dm
To
1. The Commissioner
Customs, Excise and
Service Tax Appellate Tribunal,
Chennai Bench. Chennai.

2. The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+1cc to Mr.Rajasekar, Advocate, S.R.No.16597

C.M.A.No.3114 of 2010

EV(CO)
CS/04/04/18