IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.No.3484 of 2017

The Commissioner of Central Excise,
Puducherry Commissionerate,
Goubert Avenue,
Puducherry - 605 001 ...Appellant

Vs.

M/s. Delta Power Solutions India Pvt. Ltd
Plot No.25 & 26, R.S. No. 173/3,
Om Sakthi Avenue, Karuvadikuppam,
Puducherry - 605 008. ...Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944 against the Final Order No. 423999 of 2016 dated 01.12.2016 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.A.P.Srinivas

For Respondent : Mr.Joseph Prabakar

J U D G M E N T
(Delivered by T.S.SIVAGNANAM.J.,)

This appeal filed by the Revenue is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai - 600 006 dated 01.12.2016.

2. The Tribunal by the impugned order allowed the appeal filed by the respondent assessee. The Revenue though has preferred this appeal on account of the low tax effect, the learned Standing Counsel appearing for the appellant has been given instructions by the Department to withdraw this appeal as not pressed leaving the substantial questions of law framed for consideration open, to be considered in a later case as and when a need arises. Since the appellant has proposed to withdraw the

appeal for the aforementioned reason, we do not stand in the way of the appellant doing so.

3. The learned counsel appearing for the respondent/assessee submitted that considering the peculiar facts and circumstances, a direction may be issued to the appellant to implement the order passed by the Tribunal, wherein, the Tribunal has observed that the respondent assessee's claim for refund is very much admissible and for which purpose, the matter was remanded to the original authority for ascertaining the credit amount of eligible accumulated credit that remained unutilized on account of closure of the activities of the assessee in Puducherry. Therefore, it is submitted that certain directions may be issued to the appellant to comply with the direction issued by the Tribunal.

4. Mr.A.P.Srinivas, learned Standing Counsel appearing for the appellant has strong reservations as against the issuance of any such consequential directions. It is his submission that it will set a wrong precedent and the assessee need not have any apprehension that the direction issued by the Tribunal would not be complied with. In normal circumstances, we would have even accepted the submission of the learned Standing Counsel appearing for the appellant but what prompts us to issue certain directions in the instant case is on account of the peculiar facts. This is so because, the assessee has admittedly closed down its activities in Puducherry and the date of closure as noted by the Tribunal is 01.07.2013 and they filed an application for refund on 18.07.2013. Thus, on account of the closure and as well as on account of the implementation of the General Sales Tax Act, we feel that in the instant case, an observation is required to be made while dismissing the appeal so that the appellant would be in a position to take the matter forward and implement the directions of the Tribunal.

5. For the above reasons, the appeal deserves to be dismissed on the ground of low tax effect and the substantial questions of law are left open. We direct the appellant to implement the direction issued by the Tribunal as contained in Paragraph 5 of the order. The operative portion of which reads as follows:-

> “In view of this, I am of the considered opinion that since unutilized credit lying in the books of account on account of closure of factory should not be denied only on account of that they did not meet other procedural requirements of Rule 5 of the Rules read with Notification No.27/2012. The refund is therefore very much admissible. The matter is, however, remanded back

to the original authority only for the limited purpose of ascertaining the correct amount of eligible accumulated credit that retained unutilized on account of such closure.”

6. Since the respondent assessee has closed down the factory, the appellant may assign the files to an officer who would have jurisdiction to deal with the same and implement the directions of the Tribunal.

7. In the result, the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

svki/ssm

To

The Customs,
Excise and Service Tax Appellate Tribunal,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.82002

C.M.A.No.3484 of 2017

VD(CO)
CS/26/12/2018