In the High Court of Judicature at Madras

Dated : 03.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Civil Miscellaneous Appeal No.556 of 2017 & CMP.No.3354 of 2017

The Commissioner of Central
Excise, Salem-1 ...Appellant/Respondent

Vs

Steel Authority of India Limited,
Salem Steel Plant, Salem-103. ...1st Respondent/Appellant

APPEAL under Section 35G of the Central Excise Act, 1944 against the order dated 02.2.2016 in Final Order No.40368/2016 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeal No.E/40886/2014.

For Appellant : Mr.K.Magesh
For Respondent: Mr.A.Lawrance for
M/s.Lakshmi Kumaran Associates

Judgment was delivered by T.S.SIVAGNANAM,J

The appeal by the Revenue is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 26.2.2016.

2. The above appeal was admitted on 16.8.2017 on the following substantial questions of law :

> "(i) Whether it is legally correct for the Tribunal to waive the mandatory penalty imposable under Rule 15 of the CENVAT Credit Rules, 2004 and/or Section 11AC of the Central Excise Act, 1944, when the issue of quantum of wrong availment of CENVAT credit and differential duty demandable is remanded for determination by the Adjudicating Authority? And

(ii) Whether it is legally correct for the Tribunal to waive the mandatory penalty imposable under Rule 15 of the CENVAT Credit Rules, 2004 and/or Section 11AC of the Central Excise Act, 1944 on the ground that interpretation of law was involved and the conduct of the respondent was not found questionable when the show cause notice invoked extended period of limitation to demand wrong availment of CENVAT credit and differential central excise duty?"

3. The learned Standing Counsel for the appellant had given a letter dated 29.10.2018 to the Registry seeking to withdraw the above appeal. Along with the letter dated 29.10.2018, he enclosed a letter dated 17.8.2018 received from the Deputy Commissioner (Legal), Salem, Office of the Commissioner of GST and Central Excise, Salem-1 instructing him to withdraw the above appeal based on the Board's monetary policy circular. He would state that on account of the monetary limit in this appeal, which is lesser than the threshold fixed by the Board's circular dated 11.7.2018, he has been instructed to do the needful to withdraw the appeal.

4. The letters produced by the learned Standing Counsel for the appellant dated 17.8.2018 and 29.10.2018 are placed on record. This civil miscellaneous appeal is dismissed as withdrawn and the substantial questions of law raised in this appeal are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, No.26 Sashtri Bhavan Avenue Buildings,
Haddows Road, Chennai-6.

2.The Commissioner of Central Excise,
Salem-I.

+1cc to Mr.K.Magesh, Advocate Sr.82523
+1cc to Mr.Lakshmi kumaran, Advocate Sr.82516

CMA.No.556 of 2017&
CMP.No.3354 of 2017

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srg 3/1/2019