IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM :

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

Civil Miscellaneous Appeal No. 2330 of 2018

M/s. Larsen & Toubro Limited,
LTM Business Unit, Manapakkam,
Chennai - 600 089. ... Appellant/Appellant

-vs-

The Commissioner of Central Excise,
Chennai IV Commissionerate,
(Now known as Chennai Outer Commissionerate)
MHU Complex 692,
Anna Salai, Nandanam,
Chennai - 600 035. ... Respondent

This Civil Miscellaneous Appeal is filed under Section 35G of the Central Excise Act, 1994 against the final order No.41217/2017 of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, dated 14.07.2017, in Appeal No. E/740/2005-DB.

For Appellant : Mr.N.Venkataraman
Senior Counsel
for M/s.S.Muthuvenkataraman

For respondent : Mrs.R.Hemalatha,
Senior Standing Counsel

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

Heard Mr.N.Venkataraman, the learned Senior Counsel, assisted by Mr.Akhil Suresh, the learned counsel appearing for the appellant.

2.This appeal by the assessee is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal (South Zonal) in final order No. 41217 of 2017, dated 14.07.2017.

3.Admittedly, the dispute which was raised before the Tribunal is relating to classification and valuation in respect of certain goods manufactured and cleared by the assessee, they being Integrated Mobile Missile Launcher, P-II Missile Launcher, Launching Mechanism. The Tribunal has not agreed with the assessee and has dismissed the appeal filed by the assessee.

4.The learned Senior Counsel prefaced his submission by contending that the assessee is not challenging the issue relating to classification, but they are on a very short ground stating that a detailed affidavit filed by an expert, namely, Mr. R.Gowri Shankar who has about 14 years of service in the Engineering Science of Launching Mechanism, specifically relating to Missile Launchers and Bridging Systems, has explained as to how the classification cannot be done, as done by the department in the Order-in-Original dated 19.05.2005.

5.It is the submission of the Learned Senior Counsel that this affidavit filed by Mr.R.Gowri Shankar was not dealt with by the Tribunal and therefore, the assessee is before this Court on a limited ground that the Tribunal should be directed to re-hear the matter and consider this piece of important evidence produced by the assessee.

6.Unfortunately, we are not persuaded to accept the stand raised by the Learned Senior Counsel for the assessee as this Court is denied of the power to test the order of the Tribunal pertaining to valuation issue. We are afraid that we cannot truncate the order passed by the Tribunal into two parts viz., (i) the Tribunal was bound to consider the additional materials placed by the assessee and we are told, the same were considered, and (ii) the other part is whether the decision of the Tribunal on the classification issue was justified. The correctness of the order passed by the Tribunal dated 14.07.2017 has to be tested as a whole and this Court exercising jurisdiction under Section 35G of the Central Excise Act, 1994 is not competent to do the same as there is a statutory bar from testing the correctness of the order as impugned in this appeal.

7.For the above reasons this Court is of the considered view that this appeal is not maintainable before this Court. Accordingly, the appeal is dismissed on the ground of Maintainability. Registry is directed to return the original impugned order to the appellant/assessee forthwith. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msk/mrm

To

1. The Commissioner of Central Excise,
Chennai IV Commissionerate,
(Now known as Chennai Outer Commissionerate)
MHU Complex 692,
Anna Salai, Nandanam,
Chennai - 600 035.

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

+1cc to Mr.Muthu Venkatraman, Advocate, S.R.No. 72905
+1cc to Mr.R.Hemaltha, Advocate, S.R.No. 73310

C.M.A.No.2330 of 2018

PA(CO)
GN(20/11/2018)