IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM

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

Civil Miscellaneous Appeal No.2702 of 2018

The Commissioner of Central Excise,
Now re-designed as
The Commissioner of GST and Central Excise,
Tiruchirappalli Commissionerate,
No.1, Williams Road, Cantonment,
Tiruchirappalli-620 001. ... Appellant

-vs-

M/s.Shri Amman Steels & Allied Industries,
Silambudaiyanpatti Road,
Nagamangalam, Trichy-610 001. ... Respondent

Civil Miscellaneous Appeal filed under Section 35(G)(2) of the Central Excise Act, 1944 to set aside the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 26.02.2018, in Final Order No.40535 of 2018 and to allow the appeal.

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

For Respondent : Mr.G.Natarajan
for Mr.S.Jaikumar

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JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue; and Mr.G.Natarajan, learned counsel accepting notice on behalf of the respondent/assessee.

2. The Revenue is on appeal against an order passed by the Customs, Excise and Service Tax Appellate Tribunal (for brevity "the Tribunal"), South Zonal Bench, Chennai, dated 26.02.2018, in Final Order No.40535 of 2018, raising the following

substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the Tribunal is right in law in dismissing the Revenue's appeal as not maintainable, totally disregarding the pleadings of the Revenue?
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal is right in law to dismiss the Revenue appeal when the action initiated against the assessee is well with the ambit of the provision of Section 36B of the Central Excise Act and it is not necessary that there should be any other independent corroboration to accept the printouts they have referred to above as evidence?
>
> (iii) Whether on the facts and circumstances of the case, the Tribunal is right in law to dismiss the Revenue appeal when the printouts of which were taken after the same were first opened after seizure with the password supplied by Shri.S.P.M.Anandan and in his presence and the files which were found on opening in the presence of Ms.Ponnalagu?"

3. We have perused the order passed by the Tribunal, more particularly, the order remanding the matter for fresh adjudication before the Commissioner of Central Excise, Trichy. In the said order, the Tribunal has pointed out that with regard to usage of unauthenticated software for opening the floppies, it was held that such files, which were opened with unauthenticated software, should not be relied on. The Commissioner on de novo adjudication, relied upon the information sourced by the Department from the floppies, which were opened based on the password given by the assessee/employee and eschewed the remaining. This was in compliance with the order passed by the Tribunal. The Commissioner adjudicated the matter and passed orders on 20.03.2009. Against such order, both the assessee as well as the Department filed appeals before the Tribunal. The Tribunal after taking into consideration the order passed by the Commissioner while remanding the matter, confirmed the order of the Commissioner, insofar as it relates to the duty, which was dropped, because the files were opened with unauthenticated software. Though the assessee also filed an appeal as against the order demanding duty to the tune of Rs.1.30 Crores of penalty and etc., they withdrew the appeal.

4. Thus, we find that the entire matter revolves on factual matrix and the adjudicating authority merely followed the remand order passed by the Tribunal. Thus, we find there is

no error in the order passed by the Tribunal, nor any substantial question of law, much less a substantial question of law, arises for consideration.

5. For the above reasons, the appeal filed by the Revenue is dismissed. No costs.

abr

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Central Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Chennai-600 006.

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.79742
+1cc to Mr.S.Jaikumar, Advocate, S.R.No.79641

C.M.A.No.2702 of 2018

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