IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM :

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

C.M.A. No.2513 of 2018

M/s.Raha Oils (P) Ltd.,
Represented by S.Tamilmani,
Managing Director. ... Appellant

-vs-

The Commissioner of Central Excise,
No.1, Foulk's Compound,
Anaimedu,
Salem-636 001 ` ... Respondent

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order of the Customs Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai, dated 21.08.2018, in Final Order No.42274/2018.

For Appellant : Mrs.Naveena D

For Respondent : Mr.K.Magesh, Standing Counsel

J U D G M E N T

[Delivered by T.S.Sivagnanam, J.]



Heard Mrs.D.Naveena, the learned counsel appearing for the appellant and Mr.Magesh, the learned Standing Counsel, who accepts notice on behalf of the Respondent.

2.This appeal is directed against the final order passed by the Customs Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai, in Final Order No.42274/2018, dated 21.08.2018.

3.The appeal has been filed raising the following substantial Question of Law:

> "When Section 11AC fails to get attracted for want of essential ingredients, can the proviso to sub Section 1 of Section 11A of the Central Excise Act, 1944 stands attracted, as both the provisions are mutually inclusive?"

4.The learned Counsel for the appellant does not dispute the fact that the issue which was dealt with by the Tribunal was with regard to the classification of the goods manufactured by the appellant. Equally, the appellant does not dispute the fact that as against the order passed by the Tribunal, adjudicating the classification dispute, appeal lies to the Hon'ble Supreme Court and not before this Court. However, the learned Counsel for the appellant seeks to sustain this appeal before us by contending that the Tribunal, in the impugned order has stated that the ingredients of Section 11AC of the Central Excise Act cannot be foisted on the appellant. If that be the case, extended period of limitation under proviso to Sub-Section (1) of Section 11A of the Act cannot be invoked. Consequently, the entire demand needs to be set aside.

5.We wish to point out that the order impugned before us has to be tested as a whole and cannot be truncated, as requested by the learned counsel for the appellant. Assuming that if we accept the stand taken by the appellant before us and interfere with the order passed by the Tribunal, the resultant position would be that the Department has to be held to be wrong in deciding the classification issue against the assessee. Therefore, we are of the considered view that this appeal is not maintainable before this Court.

For the above reasons, the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Note to Office:
Return the original impugned order to the appellant forthwith.

To

1 The Customs Excise and Service Tax Appellate Tribunal,
South Regional Bench, Chennai.

2 The Commissioner of Central Excise,
No.1, Foulk's Compound,
Anaimedu,
Salem-636 001 `

+1 cc to M/s.S.Durairaj, Advocate Sr.No.73707
+1 cc to Mr.K.Magesh, Advocate Sr.No.73778

C.M.A.No.2513 of 2018

NRI(CO)
CSL/16.11.2018