

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CEA-15-2012 (O&M)

Date of Decision: 3.12.2018

Commissioner of Central Excise Commissionerate, Panchkula
...Appellant.

Versus

M/s Yamuna Gases & Chemicals Ltd., Yamuna Nagar
...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Amit Goyal, Sr. Standing Counsel for the appellant.

Mr. Amar Partap Singh, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the revenue under Section 35(G) of the Central Excise Act, 1944 against the order dated 23.11.2011 (Annexure A-4) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi.

2. Learned counsel for the respondent submitted that the Central Board of Indirect Taxes and Customs (Judicial Cell) has issued circular/instructions dated 11.7.2018 whereby all the pending appeals in the High Courts where the tax effect is less than ₹ 50 lakhs are required to be withdrawn by the revenue. Learned counsel further stated that the tax effect involved in the present appeal is ₹ 40,65,204/-. According to the learned counsel, as per Clause 3 of earlier instructions dated 17.8.2011 which is also applicable to the aforesaid instructions dated 11.7.2018, the adverse judgments relating to the constitutional validity of the provisions of an Act or Rule or where Notification/Instructions/Order or Circular have been held to be illegal or ultra vires, are required to be contested irrespective of the

amount of tax involved. Clause 3 of the Instructions dated 17.8.2011 reads thus:-

“3. Adverse judgments relating to the following should be contested irrespective of the amount involved:

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

(b) Where Notification/Instruction/Order or Circular has been held illegal or ultra vires.”

3. However, learned counsel for the appellant was unable to controvert the above noted instructions and pleads that he has no instructions to withdraw the present appeal.

4. After hearing the learned counsel for the parties and in view of the fact that in the present appeal neither the constitutional validity of the provisions of an Act or Rule is under challenge nor Notification/Instruction/Order or Circular has been held to be illegal or ultra vires and particularly keeping in view the tax effect involved, this appeal is disposed of accordingly. However, liberty is granted to the revenue to file an application for revival of the appeal in case something survives therein. Needless to say that disposal of the appeal shall not be taken to be affirmation of the decision of the Tribunal on merits and that substantial questions of law have been answered in favour of the assessee-respondent.

(AJAY KUMAR MITTAL)
JUDGE

December 3, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE