In the High Court of Judicature at Madras

Dated : 04.04.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

C.M.A.No.12 of 2007
and
M.P.No.1 of 2007

The Commissioner of Customs and Central Excise,
6/7, A.T.D. Street, Race Course Road,
Coimbatore - 641 018. ...Appellant/Respondent

Vs

1.M/s.Ramakrishna Dyeing Industry,
SF No.342, Avarangadu,
Thottipalayam Village,
Angeripalayam, Tirupur - 641 603.

2.The Customs Excise and Service Tax,
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan,
Haddows Road,
Chennai - 600 006. ...Respondents
(R2 was given up in this appeal)

APPEAL under Section 35G of the Central Excise Act, 1944 to set aside the final order No.251 of 2006 dated 04.04.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shastri Bhavan (Annexe), Chennai - 600 006.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel

For Respondents: Mr.M.Karthikeyan (For R1)
R2-Tribunal

JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

Heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel for the appellant and Mr.M.Karthikeyan, learned counsel for the respondent/assessee.

2.This appeal has been filed by the revenue raising the following substantial question of law:

> "Whether the Hon'ble Tirubunal's order to remand the case to the adjudicating authority for considering the new plea of deemed credit claim of the appellant, despite its own finding that the same was never raised by the appellants before any lower authorities nor on the memorandum of appeal filed before the Hon'ble Tribunal itself is justified in view of the judgments of the Hon'ble Apex Court in 2004 (167) E.L.T. 491 (SC) and Hon'ble Tribunal in 2005 (179) E.L.t. 189 (Tri.Del.) and 2005 (192) E.L.T. 546 (Tri.-Mumbai)."

3.The order impugned before us is an order remanding the matter to the original authority for fresh consideration. The revenue is on appeal contending that the Tribunal having accepted the fact that the ground canvassed before the Tribunal was never raised before the original authority ought not to have remanded the matter fore fresh consideration and having done so, it would be in violation of the various decisions of the Tribunal as well as the Hon'ble Apex Court. It may be true that a party to a proceedings having not raised a plea before the lower authorities should not be permitted to raise the same at the appellate stage for the first time. However, there is an exception to this restriction in cases where the issue pertains to a question of law and if the Court is of the view that irreparable hardship would be caused to the party if they are prevented from raising such a contention. The Tribunal has noted that the objections raised by the revenue to the plea raised by the assessee to canvas the points relating to deemed credit, However, the Tribunal has also noted the submission of the counsel for the respondent assessee that the subject goods attract the Notification No.6/2002-CE(NT) has not been disputed.

4.Considering these facts, we are of the view that there is no error, much less the error of law in the order passed by the Tribunal. Consequently, we hold that there is no substantial question of law arises for consideration.

5.In the result, the civil miscellaneous appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Customs Excise and Service Tax,
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan,
Haddows Road, Chennai - 600 006.

2.The Commissioner of Customs and Central Excise,
6/7, A.T.D.Street,
Race Course Road, Coimbatore 641 018.

+1 cc to Mr.S.Jaikumar, Advocate, Sr.No. 33109

C.M.A.No.12 of 2007
and
M.P.No.1 of 2007

NMI(CO)
CSL/03.06.2019