IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.6.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.80 of 2011
and
M.P.No.1 of 2011

The Commissioner of Customs,
Chennai Airport, Air Cargo Complex,
Meenambakkam, Chennai 600 027. ..Appellant

Versus

M/s.Samsung Electronics India
Information & Telecommunication Ltd.,
2nd, 3rd, 4th Floor, Vipul Tech Square,
Tower C, Golf Course Road,
Sector 43, Gurgaon 122 002. ..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962 against the Final Order No.633 of 2010 dated 14.6.2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai and against the order of the Commissioner of Customs (Appeals), Customs House, Chennai-1, Made in Appeal No.725/2003 order dated 28.11.2003 and against the order of the Dy Commissioner of Customs, AIR Port and AIR Cargo, Meenambakkam, Chennai, made in order in order No.222 of 2003, dated 07.04.2003.

For appellant : Mr.P.Rajkumar Jhabakh

For Respondents : No appearance.

JUDGMENT
(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

This Civil Miscellaneous Appeal has been filed by the Commissioner of Customs calling in question the correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, by raising the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case the Appellate Tribunal is right in law in dismissing the Department Appeal without properly considering the Section 27 of the Customs Act, 1962 and CBEC Circular No.40/2002-Cus dated 17.7.2002?
(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in allowing the refund without establishing that the importer had not passed on the incidence of such duties to any other person?"

2. When the matter is taken up, the learned Standing Counsel appearing for the Customs sought for leave of the Court to withdraw the present Appeal as the Tax effect in the present Appeal is below the prescribed limit of Rs.50,00,000/-. Therefore, the appeal filed by the Customs is dismissed as not pressed, keeping open the substantial questions of law for determination in an appropriate case. A copy of this judgment may be sent to the Respondent/Assessee. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1.The Commissioner of Customs,
Chennai Airport, Air Cargo Complex,
Meenambakkam, Chennai 600 027.

2.The Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
South Zone Bench, Shastri Bhawan Annex Ist Floor,
No.26, Haddows Road, Chennai - 600 006.

3.The Commissioner of Customs(Appeals),
Customs House,Chennai - 600 001.

4.The Dy. Commissioner of Customs,
Air Port and Air Cargo,
Meenambakkam, Chennai - 600 027.

C.M.A.No.80 of 2011

NRJK(CO)

RRS(07/08/2019)