In the High Court of Judicature at Madras

Dated : 11.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Civil Miscellaneous Appeal No.3449 of 2012

The Commissioner of Central Excise and Service Tax, No.1, Williams Road, Cantonment, Trichy-1. ... Appellant

Vs

M/s.Anjaneya Steel Rolling Mills, Trichy-18 ... Respondent

APPEAL under Section 35G(2) of the Central Excise Act, 1944 against Final Order No.200/2012 dated 02.2.2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mrs.R.Hemalatha, SSC

For Respondent : Ms.Kanthi Visalakshi for K.S.Suresh

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Senior Standing Counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, which decided the issue in favour of the assessee. The appeal was filed by the Revenue by raising the following substantial questions of law :

> "i. Whether the Tribunal is correct in overlooking the orders of the Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Candid Enterprises [reported in (2001) 130 ELT 404] in the subject matter of Section 17 of the Limitation Act that fraud nullifies everything?

ii. Whether the Tribunal is correct in not applying the reported judgment in Commissioner of Income Tax, Kolkatta II Vs. West Bengal Infrastructure Development Finance Corporation [reported in (2012) 279 ELT 3] that amount of tax involved in the case and review the order of the High Court and in the present case the alleged evasion of duty of Rs.27,04,018.84 ?

iii. 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 disagreeing the pleadings of the Revenue ?

iv. Whether, on the facts and circumstances of the case, the Tribunal is right in law to draw an adverse view with regard to date of review when mitigating circumstances for non production of record were clearly explained by the Revenue ?

v. Whether, on the facts and circumstances of the case, the Tribunal's order is legal and correct in dismissing the appeal on limitation (which the Revenue disputes), without considering the merits of the case, when, on an earlier occasion, different Bench of the same Tribunal admitted the appeal and disposed of the appeal ex parte and especially when the earlier Bench of the same Tribunal had recorded that to a great extent, the Revenue had established the relationship between supplier of the unaccounted raw material and the appellants, who were alleged to have manufactured the finished products and cleared them without payment of duty? And

vi. Whether, on the facts and circumstances of the case, the Tribunal's order is legal and correct in dismissing the appeal on limitation (which the Revenue disputes), as public interest suffers though standard of proof of sufficient cause is not different in case of state and private litigant, they cannot be put on same footing as individual would always be quicker in taking decision ?”

3. The Revenue seeks to withdraw the appeal on account of low tax effect in terms of the circular dated 11.7.2018 issued by the Central Board of Indirect Taxes and Customs.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

RS

To

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

+1 cc to Mrs.R.Hemalatha, Advocate Sr.No.3933

CMA.No.3449 of 2012

CSL/21.02.2019