In the High Court of Judicature at Madras

Dated : 19.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1134 to 1136 of 2010

Commissioner of Income Tax I,
Tiruchirapalli ...Appellant

Vs

M/s.R.K.Textiles, Karur. ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 17.2.2010 made respectively in ITA.Nos.426 to 428/ Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment years 2001-02, 2002-03 and 2004-05., against the Deputy Commissioners of Income Tax, Tiruchirapalli in AAA8R6620H dt 16/11/2007/2000-01, 2002-03 and 2004-05 and against the commissioner of police, Tiruchirpalli in ITA nos.116 to 118/07-08 dated 17/2/2009.

For Appellant: Mr.M.Swaminathan, SSC assisted by
Ms.V.Pushpa, SC

For Respondent:Mr.N.Quadir Hoseyn

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

We have heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Standing Counsel appearing for the appellant - Revenue and Mr.N.Quadir Hoseyn, learned counsel appearing for the respondent - assessee.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 17.2.2010 made respectively in ITA.Nos.426 to 428/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment years 2001-02, 2002-03 and 2004-05.

3. The appeals were admitted on 18.1.2011 on the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee, a supporting manufacturer, was entitled to deduction under Section 80HHC in respect of the DEPB and duty drawback disclaimed in its favour by the exporter ?

ii. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee, a supporting manufacturer, was entitled to deduction under Section 80HHC in respect of the DEPB and duty drawback disclaimed in its favour by the exporter without taking note of the Third Proviso to Sub-Section (3) of Section 80HHC and the difference between the provisions of Sub-Sections (3) and (3A) of Section 80HHC ?

iii. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had any material to come to the conclusion that the DEPB and duty drawback benefit received by the assessee by virtue of disclaimer issued by the exporter in its favour, should be regarded as part of sale consideration when such benefits could not be treated as export benefits under Section 28(iiia) etc., ? And

iv. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the decision of the Supreme Court in the case of CIT Vs. Baby Marine Exports [reported in 290 ITR 323] was applicable to the assessee's case without noticing that the said case related to export premium whereas in the assessee's case, the issue related to DEPB and duty drawback disclaimed in its favour by the exporter?"

4. The learned Senior Standing Counsel for the appellant submits that the above appeals are not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in the respective cases is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect in the respective cases 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 appeals to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
Chennai 'C' Bench.

2.The Commissioner of Income Tax, Circle-II,
No.44, Williams Road, cantonment, Tiruchirapalli.

3.The Deputy Commissioner of Income Tax,
Circle-II, No.44, Williams Road, Tiruchirapalli.

+2cc to Mr.M.Swaminathan, Advocate SR.70415, 70416
+1cc to Mr.N.Quadir Hoseyn, Advocate SR.70270

TCA.Nos.1134 to 1136 of 2010

SJ(CO)
CB(22/10/2019)