IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A No. 1707 of 2019
in
C.M.P.No.5314 of 2019

M/s.Samraj Engineering Controls Pvt.Ltd.,
No.167/1, 167/2, Mettupalayam Village,
Sriperumbudur, Kanchipuram-631 604.
... Appellant/Appellant

-Vs-

The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai-600 040.
...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944 against the order No.42502 of 2018 dated 25.09.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal.

For Petitioner : Mr. Hari Radhakrishnan

For Respondent : Mr.R.Hemalatha
Senior Standing Counsel

ORDER

This Appeal by the assessee has been filed under Section 35G of the Central Sales Tax Act, 1944 (for brevity 'the Act') challenging the order No.42502 of 2018 dated 25.09.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal.

2. This appeal has been filed raising the following Substantial Questions of Law:

"(i) Whether the tribunal had erred in coming to a conclusion that the appellant had not challenged in legality of the duty demand when the appellant has been consistently pleading that the demand of reversal of cenvat credit beyond the normal period of limitation is not sustainable?

(ii) Whether the Tribunal had erred by not giving any finding on the issue whether the ingredients of Section 11 AC stand attracted in the present case so as to invoke the extended period of limitation and has thus failed to exercise jurisdiction?

(iii) Whether the Tribunal had erred by failing to follow the ratio laid down by the Hon'ble Supreme Court in the case of Uniworth Textiles Ltd., Vs.CCE [2013 (288) ELT 161 (SC) and also in Commissioner of Central Excise Vs.MTR Foods Ltd [2012 (282) ELT 196 (Kar)] in addition to the several decisions of the Tribunal which were cited by the appellant in the appeal memorandum filed before the Tribunal?"

3. We have heard Mr.Hari Radhakrishnan, learned counsel for the appellant and Mrs.R.Hemalatha, learned Senior Standing Counsel, who is accepting notice for the respondents.

4. We take up Substantial Question of Law No.2 for consideration first. If the appellant is able to convince this Court that such question should be answered in favour of the appellant, then the order impugned needs to be set aside and the matter be remanded to the Tribunal for fresh consideration.

5. The appellant's case is that the accounts are periodically audited by Officers on Internal Audit Group. No objection was raised by the audit in the year 2012 when the accounts were audited and the assessee submitted his appeal to the Commissioner (Appeals) that in view of the above fact, no malafide could be attributed. The assessee relied on various decisions of the Tribunal and the High Courts namely CCE Vs.MTR Foods Ltd. [reported in (2012) 282 ELT 196 (Kar)] & Rajkumar Forge Ltd., [reported in 2010 (262) ELT 155 (Bom)] and contended that extended period of limitation cannot be invoked against the appellants.

6. These decisions were relied on by the appellant to support their contention that on the basis of the material on record it cannot be said that there was any misstatement of facts by the assessee as the department was fully aware of the activities of the assessee. The Tribunal noted the contentions raised by the assessee in Para 5 of the impugned order but held that since assessee has not challenged the legality of the duty demand, it is not necessary to give finding on the invocation of extended period of limitation because the assessee had accepted the demand of duty. However, we find this conclusion of the Tribunal is incorrect because in so far as the duty demand for the period which fell within the period of limitation, the assessee has reversed the credit. So far as the credit availed during the extended period of limitation, the assessee has

challenged the invocation of Section 11AC of the Act. Consequently, they seek for setting aside the demand of duty in excess of amount already paid. Therefore, the Tribunal should have decided the issue as to whether the extended period of limitation could be invoked against the assessee.

7. Thus, the Substantial Question of Law No.2 is answered in favour of the assessee as ascertained by us earlier. In the light of the above conclusion, necessarily, the matter has to be re-heard by the Tribunal on merits and in accordance with Law. For such reasons, we answered the Substantial Question of Law No.2 in favour of the assessee and Substantial Question of Law Nos.1 & 3 are left open and the order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for fresh consideration on merits and in accordance with law.

8. In the result, this Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//
Sub Assistant Registrar

mrm/ssb

To

The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai-600 040.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.20243
+1cc to M/s.R.Hemalatha, Advocate, S.R.No.19600

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&
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RSI(CO)

RRS(27/05/2019)