IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

CIVIL MISCELLANEOUS APPEAL No.1944 of 2018

THE COMMISSIONER OF GST &
CENTRAL EXCISE CHENNAI SOUTH
COMMISSIONERATE
MHU COMPLEX
NO.692 ANNA SALAI
NANDANAM CHENNAI. ... Appellant/ Petitioner

Vs

M/S. LARSEN & TOUBRO LTD
ENGINEERING CONSTRUCTION & CONSTRACTS
DIVISION MOUNT POONAMALLEE ROAD
MANAPAKKAM, CHENNAI. ... respondent/ Respondent

Appeal filed to set aside the final order No.43467/2017 dated 21.12.2017 in Appeal No.ST/147/2010-DB passed by the Hon'ble Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.S.Ramaswamy

For respondent : Mr.R.Parthasarathy,
for M/s.Lakshmi Kumaran & Sridharan

JUDGMENT

(Delivered by DR.VINEET KOTHARI, J.)

The Revenue has filed this appeal aggrieved by the order dated 21 December 2017 passed by the learned Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, holding that in view of the various decisions referred to by it in paragraph 4 of the impugned order, the Assessee was not liable to pay interest in the present case. The relevant portion of the impugned order is quoted below for ready reference.

"4. We find that the issue stands considered by the Hon'ble Karnataka High Court in the case of Commissioner, LTU, Bangalore vs. Bill Forge Pvt. Ltd - 2012 (279) ELT 209 (Kar.) wherein after considering the Hon'ble Supreme Court decision in the case of UOI vs. Ind-Swift Laboratories Ltd. 2011(265) ELT 3 (S.C.), the Hon'ble High Court held that in case the credit availed stands reversed, without utilization, no interest liability would arise. We also note that the Hon'ble Madras High Court in the case of CCE, Madurai vs. Strategic Engg. Pvt. Ltd. - 2014(310) ELT 509 (Mad.) as also the Hon'ble Gujarat High Court in the case of CCE VS. Dynaflex Pvt. Ltd. - 2011 (266) ELT 41 (Guj.) has held that the non-reversal of accumulated and unutilized Cenvat credit before utilization cannot attract interest liability. In as much as the issue stands decided by various courts and especially by the jurisdictional High Court of Madras, we set aside the impugned order confirming demand of interest and imposition of penalty and allow the appeal with consequential relief to the Appellants. Miscellaneous petitions disposed of."

2. It was jointly submitted by the learned counsel on either side that there is no detailed discussion of the judgments cited by them in the subject case nor has the later amendment of law in this regard been discussed by the learned Tribunal. The learned counsel for the Assessee also submitted that some of the contentions raised on the merits of the case have also not been discussed by the learned Tribunal.

3. In view of the aforesaid submissions, we are inclined to set aside the order of the learned Tribunal with a direction to the Tribunal to pass a detailed and speaking order, on merits and in accordance with law, after hearing both the sides.

4. With this observation, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.Lakshminarayanan , Advocate SR.No. 102992
+1cc to Mr.K.S.Ramaswamy , Advocate SR.No. 102370

C.M.A.No.1944 of 2018

A.SK(08/01/2020)