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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **04.10.2019**
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE R.THARANI

C.M.A.(MD).No.294 of 2019

The Commissioner of GST & Central Excise
Central Revenue Building,
Madurai 625 002. ... Appellant/Appellant

Vs.

M/s.Mahasemam Trust,
1 & 2 Popular House,
Lake Area,
Melur Road,
Uthankugi,
Madurai-625 107 ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act 1944, to set aside the Final Order Nos.42115-42116/2018 dated 23.07.2018 passed by the Hon'ble Customs, Excise and Service Tax Appellate Tribunal, Chennai in Appeal No.ST/23/2011-DB, ST/118/2011-DB arising out of Order-in-original No.1/2010 ST dated 23.11.2010 passed by the Commissioner of Central Excise, Madurai.

For Appellant : Mr.B.Vijay Karthikeyan
For Respondent : Mr.S.Jaikumar

JUDGMENT

[Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.B.Vijay Karthikeyan, learned counsel appearing for the appellant and Mr.S.Jaikumar, learned counsel appearing for the the respondent.

2.This appeal has been filed by the Revenue challenging the order passed by the Customs Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai, in final Order Nos.42115-42116/2018 dated 23.07.2018.

3.This appeal has been admitted on the following substantial questions of law,

"*1.Whether in the facts and circumstances of the case, the Hon'ble Tribunal was justified in law in setting*

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aside the order in Original No.1/2010-ST dated 23.11.2010, confirming demand and interest for the period from 01.05.2006 to 30.04.2007, when the words "any other person" was part of the definition under Section 65(105)(zm)?

2.Whether the order of Hon'ble Tribunal by setting aside the mandatory interest, penalty under Sections 75,77 and 78 of the Finance Act, 1994 is legally correct and proper for the period from 01.05.2006 to 30.04.2007?"

4.The Central Board of Indirect Taxes and Customs had issued circulars from time to time and the latest being the circular, dated 22.08.2019, which fixed the monetary limits for the Department to file appeals against the order of the Tribunal and *per se*, the appeal pending before this Court, subject to the condition, the monetary limit should be above Rs.1 crore. Earlier there was an instruction stipulating the lesser amount, however, the instruction dated 22.08.2019 issued by the Central Board of Indirect Taxes and Customs (CBITC) is not only applicable to the fresh cases but also the pending cases. Thus, applying the said instruction, this appeal is dismissed as withdrawn and the substantial questions of law raises in this appeal are left open. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Customs, Excise and Service Tax
Appellate Tribunal,
Chennai.
2.The Commissioner of GST & Central Excise
Central Revenue Building,
Madurai 625 002.
3.The Commissioner of Central Excise,
Madurai.
+1 CC to M/s.S.JAIKUMAR, Advocate (SR-91719[F] dated 14/10/2019)

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