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.880 of 2014

The Commissioner of Central Excise
Central Revenue Building,
Lal Bahadur Shastri Street,
Bibikulam,
Madurai-625 002. ... Appellant/Respondent

Vs.

Shri.J.I.Jesudasan
A2/G2, Dennis Garden
Sambakkulam,
Madurai-625 007. ... Respondent/Appellant

PRAYER: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944,(Applicable to Service Tax matters under Section 83 of the Finance Act 1994), to set aside the Final Order No.40081/2014 dated 31.01.2014 relating to the respondent/assessee Appeal in ST/40009/2013-SM passed by the Hon'ble the Customs, Central Excise and Service Tax Appellate Tribunal, Chennai and thereby the demand of Penalty Rs.16,57,515/- be sustained.

For Appellant : Mr.S.Gurumoorthy
For Respondent : Mr.N.Visvanathan

JUDGMENT

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

Heard Mr.S.Gurumoorthy, learned counsel appearing for the appellant and Mr.N.Visvanathan, 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 No.40081/2014 dated 31.01.2014

3.In this appeal, the following substantial questions of law have been raised,

"*(1)In the facts and circumstances of the case whether the Tribunal's findings that the respondent-*

assessee did not have much leverage in getting the Service Tax amount in time and he is the small time enterpreneur will constitute as "reasonable cause" for waiver of penalty under Section 80 of the Finance Act 1994?

(2) whether the findings of the Tribunal that:-

(a) Respondent-assessee did not have much leverage with the service receiver in getting the Service Tax amount in time is legal and proper when the criteria for discharging the Service Tax liability was the receipt of the gross amount as per Section 67(2) of Finance Act 1994?

(b) The Respondent-assessee is a small time entrepreneur is legal and proper especially when the small scale service provider Notification No.6/2005-ST dated 01.03.2005 prescribes the limit of value of clearances to the extent of Rs.4 lakhs for 2005-06, Rs.8 lakhs for 2006-07 & Rs.10 lakhs from 2007-08 & 2008-09 as against the actual turnover of the Respondent-assessee of Rs.38,30,487/- for 2005-06, Rs.48,96,983/- for 2006-07, Rs.58,97,722/- for 2007-08 and Rs.68,65,778 /- for 2008-09?"

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. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Commissioner of Central Excise
   Central Revenue Building,
   Lal Bahadur Shastri Street,
   Bibikulam, Madurai-625 002.

2.The Customs, Central Excise and Service
Tax Appellate Tribunal,
Chennai.

+1 CC to Mr.N.VISWANATHAN, Advocate (SR-91660[F] dated 09/10/2019)

C.M.A.(MD).No.880 of 2014
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