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.1012 of 2017

The Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Tirunelveli 627 007. ... Appellant

Vs.

Srivilliputtur Municipality Corporation
(Represented by the Municipal Commissioner)
Srivilliputtur 626125
Virudhunagar District. ... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, r/w Section 83 of the Finance Act, 1994), to set aside the Final Order No.40387/2016 dated 01.03.2016 passed by the Southern Zonal Bench of Customs Excise and Service Tax Appellate Tribunal, Chennai and uphold the Order-in-Original No.13/JC/ST/2013 dated 19.12.2013 passed by the Joint Commissioner of Central Excise, Triunelveli in respect of Srivilliputtur Municipality.

For Appellant : Mr.S.Gurumoorthy

For Respondent : Mr.N.Dilipkumar

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.Dilipkumar, 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.40387/2016 dated 01.03.2016.

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

"(i)Whether the Hon'ble CESTAT SZB, Chennai was correct in sustaining the appellate Commissioner's order in the facts and circumstances of the case.

(ii)Whether the Hon'ble Tribunal is correct in reading down an unambiguous provision of law in such a manner as to create a certain class of tax payers and ascribing preferential treatment.

(iii)Whether the Hon'ble Tribunal is correct in overlooking the primacy of Section 80 of the Act so as to render it otiose.

(iv)Whether the Hon'ble Tribunal is correct in waiving penalty imposed under Section 78 of the Act, when the conditions stipulated expressly in Section 80 of the Act for such a waiver are neither fulfilled nor such an argument is put before the competent authorities.

(v)Whether it is legally correct for the Hon'ble Tribunal to waive the mandatory penalty imposable under Section 78 of the Finance Act, when the demand of service tax invoking extended period of limitation is upheld by the Hon'ble Tribunal?; and

(vi)Whether it is legally correct for the Hon'ble Tribunal to waive the mandatory penalty imposable under Section 78 of the Finance Act, 1994, on the ground that there was no malafide on the part of M/s.Srivilliputtur Municipality and no Government body would be making any fraud or collusion to defraud Revenue when the demand of service tax with interest itself had been upheld invoking extended period of limitation is upheld by the Hon'ble Tribunal?”

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 (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Tirunelveli 627 007.

2.The Southern Zonal Bench of Customs
Excise and Service Tax Appellate Tribunal,
Chennai.

3.The Joint Commissioner of Central Excise,
Triunelveli.

+1 CC to M/s.P.MAHENDRAN, Advocate (SR-91554[F] dated 04/10/2019)

C.M.A.(MD).No.1012 of 2017
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JMN(14.11.2019) 3P : 5C