IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CEA 5/2019 (O&M)
Date of decision:10.07.2019

Commissioner of Central Excise ,Rohtak

..............Appellant

v.

Sh.K.Shankaran Iyer,Senior Manager(Excise)SPL Ltd., (Now M/s Somany Ceramics Ltd.)

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- Mr.Sourabh Goel,Sr.Standing Counsel for Indirect Taxes with Mr.Sanjeeva K.Uppal,Advocate for the appellant.

Jaswant Singh,J,(Oral).

CM 989-CII/2019 has been filed seeking condonation of delay of 818 days in refiling the appeal.

For the reasons stated in the application, the same is allowed and delay in refiling the appeal is condoned.

Main case.

Revenue is in appeal against the order dated 12.8.2015 (A-3) passed by Customs,Excise and Service Tax Appellate Tribunal,New Delhi whereby appeal filed by the respondent was allowed and Order-in-Original dated 18.10.2006 (A-2) passed by Commissioner,Central Excise Commissioner,Rohtak confirming demand of Rs.1,66,33,067/- equivalent to cenvat taken by

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respondent on inputs in stock,in process of inputs contained in their final products and required to have been paid before effecting clearance under Notification No.60/2003-CE dated 29.7.2003; and ordering recovery of interest and imposing penalty; was set aside.

In the present appeal, the following substantial questions of law have been raised:-

(i) Whether the Ld.Tribunal is correct in setting aside the demand of Rs.21,32778/- (Rupees Twenty one lakhs thirty two thousand seven hundred and seventy eight only)equivalent to Cenvat credit taken by the Company on inputs in stock,in process or inputs contained in their final products and required to have been paid before effecting clearance under Notification No.60/2003-CE dated 29.7.2003 under Rule 12 of the Cenvat Credit Rules,2002 read with proviso to Section 11A(1) by invoking the extended period by wrongly relying upon the judgment in the case of Saboo Alloys (supra)?

(ii) Whether the Ld.Tribunal is correct in setting aside the interest on the balance amount of Rs.21,32,778 recoverable from the Company from the date of the amount becoming recoverable i.e. 7.8.2003 to the date of actual payment under Rule 12 of the Rules read with Section 11AB of the Act, by wrongly relying on the judgment in the case of Saboo Alloys(supra)?.

(iii) Whether the Ld.Tribunal is correct in setting aside the Penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) imposed on the Company under Rule 25 of the Central Excise Rules,2002 as well as the penalty of Rs.50,000/- (Rupees Fifty thousand only) each imposed on

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Sh.R.K.Lakhotia, General Manager(Finance) and on Sh.K.Shankran Iyer,Senior Manager (Excise) of the party under Rule 26 of the Central Excise Rules,2002?

At the time of hearing,learned counsel for the appellant admits that in view of instructions dated 11.7.2018 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell) the instant appeal is not maintainable before this Court, the monetary limit being below Rs.50,00,000/-.

In view of the said instructions dated 11.7.2018 learned counsel for the appellant prays for withdrawal of the instant appeal, however, the question of law raised would remain open.

Dismissed as withdrawn.

(Jaswant Singh)
Judge

10.7.2019. **(Lalit Batra)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**

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