IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

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

C.M.A.No.2739 of 2017

Commissioner of Central Excise
No.1, Foulks Compound
Anai Medu, Salem - 636 001. ... Appellant

..Vs..

M/s.Rajalakshmi Textile Processors Limited
B.P.Agraharam Road, R.N.Pudur, Erode-638 005.
... Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.41965/2016 dated 25.10.2016 in Appeal No.E/304 of 2005 passed by the CESTAT, Southern Regional Bench, Chennai.

For Appellant : Mr.V.Sundareswaran
Sr.Standing Counsel

For Respondent : Mr.Santhana Gopalan
for M/s.Lakshmi Kumaran

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

After hearing the learned counsel on both sides, we are satisfied that the contentions on the merits of the case sought to be raised by the learned counsel for the Revenue Mr.V.Sundareswaran do not appear to have been raised before the Tribunal and there is no mention of any such contentions in the impugned order dated 25.10.2016 passed by the learned Tribunal.

2. Learned Tribunal seems to have decided the case simply following the decision of the Honourable Supreme Court in “Commissioner of Central Excise -Vs- Angadpal India Pvt.Ltd” reported in 2015 (325) ELT 228 (SC) holding that the Rule 96 ZQ of the Central Excise Rules having been struck down by the

Madras High Court in "Beauty Dyers -vs- Union of India" reported in [2004 (166) E.L.T.27 (Mad)], in view of the said judgment, the adjudication order cannot be sustained.

3. Learned counsel for the Revenue Mr.V.Sundareswaran sought to raise his contentions before us on merits by submitting that the striking down of Rule 96ZQ is not applicable to the facts of the present case.

4. We are not inclined to entertain these submissions unless such submissions have been first raised before the learned Tribunal and the same have been dealt with by the Tribunal in appropriate manner by reasoned order thereon.

5. Though the learned counsel for the respondent Assessee also raised a plea before us that the Revenue stakes involved in the present case are below the prescribed monetary limit as per the latest litigation policy of Revenue Department, we are not inclined to consider the same at this stage.

6. We leave the appellant Revenue free to file a Review Petition or Miscellaneous Petition before the learned Tribunal to raise all its contentions and unless the Tribunal deals with the said contentions and gives its own reasons for deciding the case, we are of the view that no question of law can be said to be arising from the present impugned order passed by the learned Tribunal.

7. Therefore, we dismiss this appeal with the aforesaid liberty to the appellant Revenue. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The Assistant Registrar,
Customs, Excise & Service Tax
Appellate Tribunal,
No.26, Sashtri Bhavan Annexe Building,
Haddows Road, Chennai-600 006.

+1cc to Mr.Lakshmi Kumaran, Advcoate Sr.3956

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mp[co]
srg 03/03/2020