IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal Nos.3183 to 3190 of 2009

The Commissioner of Central
Excise & Service Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101. ...Appellant in all cases

Vs

1. M/s.Chennai Petroleum
Corporation Ltd.,
Manali, Chennai - 600 068.

2. Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Shasthri Bhawan Annexe, 1st Floor,
26, Haddows Road,
Chennai - 600 006. ...Respondents in all cases

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 35G of Central Excise Act, 1944 to set aside the impugned order of the CESTAT in Final Order Nos.220 to 228 of 2009 dated 13.02.2009.

For Appellant: Mr.Rajendran Raghavan
Senior Standing Counsel

For Respondents: Mr.R.Raghavan for R1
R2- Tribunal

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COMMON JUDGMENT
(Delivered by T.S.Sivagnanam,J)

These appeals filed by the appellant under Section 35G of the Central Excise Act, 1944 is directed against the order dated 13.02.2009 made in Final Order Nos.220 to 228 of 2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai

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('the Tribunal' for brevity).

2. The appeals were admitted on 11.01.2010 on the following substantial questions of law:

> "1. Whether the subsequent action of the assessee/1st respondent in giving credit note would entitle with a refund claim under Sec.11B of Central Excise Act especially when the original conduct was that admittedly, they have passed on the duty burden to the buyer by the assessee/1st respondent?
>
> 2. Whether the Tribunal is right in holding that once the 1st respondent passed on the duty burden at the time of clearance of LPG, and later a reimbursement is made by way of issuing of credit notes will prove that the incidence of duty is not passed and the 1st respondent are eligible for refund?"

3. We have heard Mr.Rajendran Raghavan, learned Senior Standing Counsel appearing for the appellant and Mr.R.Raghavan, learned counsel appearing for the first respondent.

4. The appellant/Department seeks to withdraw the case on account of low tax effect in terms of the circular dated 22.8.2019 issued by the Central Board of Indirect Taxes and Customs. By the said Circular, the monetary limit for filing or pursuing any matter before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in these cases are less than the threshold limit.

5. In the light of the above, these Civil Miscellaneous Appeals are dismissed on the ground of low tax effect and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the appellant/Department to file a petition before this Court to restore the matter to be heard and decided on merits. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Shasthri Bhawan Annexe, 1st Floor,
No.26, Haddows Road,
Chennai - 600 006.

2. The Commissioner of Central
Excise & Service Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

+8cc to Mr.Rajendran Raghavan, Advocate, S.R.No. 12000, 12001, 12002, 12003, 12004, 12005, 12006, 12007

C.M.A.Nos.3183 to 3190 of 2009

SR II(CO)
GN(24/03/2021)

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