In the High Court of Judicature at Madras

Dated : 03.02.2021

Coram :

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

Referred Case No.4 of 2008

Commissioner of Central Excise,
Chennai III Commissionerate,
Chennai ...Petitioner

Vs

1.The Customs, Excise & Gold
(Control) Appellate Tribunal,
South Zonal Bench, Chennai.

2.M/s.Ashok Leyland ...Respondents

REFERRED CASE under Section 35H(4) of the Central Excise Act, 1944 against Final Order No.1297/2000 dated 18.09.2000 on the file of the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Chennai, against the order in Appeal No.328/98(m.111) dt.25/6/98 on the file of the Commissioner of Central Excise III Chennai.

For Petitioner : Mr.A.P.Srinivas, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned Senior Standing Counsel for the petitioner.

2.This referred case by the Revenue challenges the order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, which decided the issue in favour of the assessee.

3.The referred case was filed by the Revenue by raising the following substantial questions of law :

> "1.Whether the restriction availing modvat credit within six months is available even in the circumstances when the date of invoice is 20.03.1995 and the assessee actually availed the credit on 23.09.1995 i.e. after a lapse of 3 days and that too when the amended notification No.28/95

dated 29.06.1995 has taken effect from 29.06.1995?

2.Whether the above restriction is available even under the circumstances in which modvat credit was taken after a lapse of 13 months from the date of issue of Invoice and especially after issue of Notification No.28/95 dated 29.06.1995 wherein it has been specifically mentioned that credit shall not be taken after six months of the date of issue of any documents specified in sub rule 3 of Rule 57-G?"

4.The Revenue 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 this case is less than the threshold limit.

5.In the light of the above, the referred case is dismissed on the ground of low tax effect and the substantial question of law raised is left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to file a petition before this Court to restore the matter to be heard and decided on merits.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

1.The Customs, Excise and Gold (Control)
Appellate Tribunal,
South Zonal Bench, Chennai.

2.The Commissioner of Central Excise III,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate SR.6426

R.C.No.4 of 2008

SR(CO)
CB(23/02/2021)