IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.M.A.No.1945 of 2016

Tamil Nadu Petroproducts Ltd.,
Manali,
Chennai-600 068 .. Appellant/Respondent

-vs-

The Commissioner of Central Excise,
Chennai-I,
Commissioner of Central Excise (Appeals),
Chennai. .. Respondent/Appellant

Appeal under Section 35-G of the Central Excise Act, 1944, against the order dated 16.02.2015 made in Final Order No.40170 of 2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-600 006.

For Appellant : Mr.N.Prasad

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JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/assessee, filed under Section 35-G of the Central Excise Act, 1944, is directed against the order dated 16.02.2015, made in Final Order No.40170 of 2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-600 006.

2.The appeal was admitted, on 06.10.2016, on the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the Hon'ble Customs, Excise and Service Tax Appellate Tribunal committed an error of law in restoring levy of penalty u/s 11-AC of the Central Excise Act, 1944, when the Section required positive evidence of fraud and suppression of facts with intent to evade payment of duty which was non-existent in the instant case?

(ii) Whether in the facts and circumstances of the case, the Hon'ble Custom, Excise and Service Tax Appellate Tribunal committed an error of law in restoring the levy of penalty under Rule 173-Q of the Central Excise Rules, 1944 when the same was subject to the provisions of Section 11-AC of the Central Excise Act, 1944 which required positive evidence of fraud and suppression of facts with intent to evade payment of duty and when the same was not established?

(iii) Whether in the facts and circumstances of the case, the Hon'ble Customs, Excise and Service Tax Appellate Tribunal committed an error of law in approaching the levy of penalty u/s 11-AC as that which would stand attracted for mere civil infraction when the same required intent to evade payment of duty? and

(iv) Whether in the facts and circumstances of the case, the Hon'ble Customs, Excise and Service Tax Appellate Tribunal committed an error of law in concluding that the order of Commissioner of Central Excise (Appeals) in deleting the penalty had no basis when in fact, the deletion of penalty by the Ld. First Appellate Authority was done only after taking notice of the explanation offered by the appellants as recorded in the order dated 10.10.2003 itself deleted the penalty?"

3.Heard Mr.N.Prasad, learned counsel for the appellant/assessee.

4.It is submitted by the learned counsel for the assessee that Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, was issued in favour of the assessee on 30.12.2019.

5.In the light of the above, nothing survives for adjudication in this appeal and the same is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
26, Haddows Road, Shastri Bhawan Annexe, I Floor,
Chennai-600 006.

2.The Commissioner of Central Excise,
Chennai-I,
Commissioner of Central Excise (Appeals),
Chennai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.N.Inbarajan, Advocate SR.112

C.M.A.No.1945 of 2016

RSI(CO)
CB(05/03/2021)