IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

C.M.A. No.2155 of 2016

The Commissioner of Central Excise & Service Tax,
Central Excise Commissionerate,
No.1, Williams Road,
Cantonment,
Tiruchirapalli-620 001. ... Appellant/Respondent

Vs

1. M/s.Cheran Cement Ltd.,
Kunnagoundanpatty,
Krishnarayapuram Taluk,
Karur District. ...1st Respondent/Appellant

2. Customs Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe,
No.26, Haddows Road,
Chennai – 600 006. ... 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G(1) of the Central Excise Act, 1944 against the Final Order No.40847/2015 dated 08.7.2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant : Mr.A.P.Srinivas
Senior Standing Counsel
For Respondents : R1-No appearance
R2-Tribunal

JUDGMENT

Judgment was delivered by PUSHPA SATHYANARAYANA,J

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

2. The Appeal filed by the Revenue challenges the common order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006, which decided the issue in favour of the assessee.

3. The Appeal is admitted on the following substantial question of law :

> "Whether the Hon'ble Tribunal was legally correct in holding that the demand of duty under Rule 8 (3A) is unsustainable and the demand of duty and penalty imposed is liable to be set aside when the law is very clear that the respondent shall pay excise duty only on consignment basis at the time of removal , without utilising the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon and in the event of any or such failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in law shall follow ?"

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 Appeal 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(CCC)

//True Copy//

Sub Assistant Registrar

srn

To

Customs Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe,
No.26, Haddows Road,
Chennai - 600 006.

C.M.A. No.2155 of 2016

SJ (CO)
K.RK. (26.11.2021)