IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM :

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

Tax Case Appeal No.741 of 2018

M/s.Mitsuba Sical India Private Limited,
(Previously Mitsuba Sical India Ltd.),
Plot No.D-8, SIPCOT Industrial Complex,
Gummidipoondi - 601201. ...Appellant

Vs

The Deputy Commissioner of Income-Tax,
Corporate Circle 4(1),
[Presently Corporate Circle 4(2)],
121, M.G.Road,
Nungambakkam, Chennai - 600034. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 03.05.2018 made in ITA.No.400/CHNY/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2012-13.

AGAINST the order dated 31/12/2016 on the file of the Deputy Commissioner of Income Tax Corporate Circle – 4 (1), Chennai under Section 143 (3), r.w.s.144C (13) of Income Tax Act, 1961.

AGAINST the order dated 30/03/2016 on the file of the Assistant Commissioner of Income Tax Corporate Circle – 4 (1), Chennai, for the Assessment Year 2012-13.

For Appellant: Mr.Vikram Vijayaraghavan
for Subbaraya Aiyar Padmanabhan
For Respondent: Mr.Karthik Ranganathan
Senior Standing Counsel

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

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 03.05.2018 made in

ITA.No.400/CHNY/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench ('the Tribunal' for brevity) for the assessment year 2012-13.

2. The appeal was admitted on 17.12.2018 on the following substantial questions of law:

> "1. Whether on facts and circumstances of the case, the order of the Tribunal was perverse in law and facts by holding Appellant has not demonstrated need for customs duty adjustment?
>
> 2. Whether on facts and circumstances of the case, the Tribunal erred in rejecting the adjustment in respect of non-cenvatable customs duty of the Appellant made as per the provisions of S.92C of IT Act read with Rule 10B of the IT Rules, 1962? and
>
> 3. Whether on facts and circumstances of the case, the Tribunal erred in including extraordinary expenditure being the non-cenvatable customs duty paid by Appellant which will affect its operating margin (PLI) and not that of its comparables thereby warranting an adjustment as per the transfer provisions of the Act read with Rules?"

3. We have heard Mr.Vikram Vijayaraghavan, learned counsel appearing on behalf of the appellant and Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel appearing for the appellant/assessee submits that the appellant/assessee has already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 28.12.2020 and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. The assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a miscellaneous petition for restoration, the Registry shall place such petition before the appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty and consequently, the substantial questions of law framed are left open. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Chennai 'D' Bench.

2. The Deputy Commissioner of Income-Tax,
   Corporate Circle 4(1),
   [Presently Corporate Circle 4(2)],
   121, M.G.Road,
   Nungambakkam, Chennai - 600034.

3. The Assistant Commissioner of Income Tax,
   Corporate Circle (4), Chennai.

4. The Section Officer,
   Judicial Section,
   High Court, Madras.

TCA.No.741 of 2018

GP(CO)
GN(10/02/2021)