IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.2119 of 2017

The Commissioner of Service Tax-I,
Newry Towers, Plot No.2054, I Block,
2nd Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040. ...Appellant

Versus

M/s APL (India) Private Limited,
No.6, 2nd Floor, Whannels Road,
Egmore, Chennai -600 008. ...Respondent

Civil Miscellaneous Appeal filed under Section 35 (G) of the Central Excise Act, 1944 against the order dated 01.02.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in Final Order No.40145 of 2017 in Appeal No. ST/117/2008-DB.

For Appellant : M/s.Hema Muralikrishnan
Senior Standing Counsel

For Respondent : M/s.P.Jayalakshmi
for Mr.S.Muthu Venkataraman

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Revenue, challenging the order dated dated 01.02.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in Final Order No.40145 of 2017 in Appeal No. ST/117/2008-DB.

2.By order dated 05.02.2019, this court admitted the aforesaid civil miscellaneous appeal on the following substantial questions of law:

(i)Whether in the facts and circumstances of the case, the Tribunal is right and justified in allowing the appeal of the assessee on the ground that the adjudication order had travelled beyond the SCN when tax has been levied in the adjudication order on the very same service and amount that had been proposed in the SCN?

(ii) Whether in the facts and circumstances of the case, the Tribunal is correct and justified in holding that liability for the period from 01.07.2003 to 31.03.2006 cannot be fastened on the assessee without analyzing the provisions of the Statute and the service rendered by the assessee?

(iii) Is not the finding of the Tribunal that the adjudication had been made on a completely new ground which was not the allegation in the SCN bad and perverse and liable to set aside?

3.When the matter was taken up for consideration, the learned standing counsel appearing for the appellant / Revenue brought to the notice of this court the instruction issued by the Central Board of Indirect Taxes & Customs (Judicial Cell), Ministry of Finance, Department of Revenue, New Delhi, in F.No.390/Misc/116/2017 - JC dated 22.08.2019, which was communicated by the Principal Chief Commissioner of GST & Central Excise, Tamil Nadu & Puducherry, in C.No.IV/16/404/2019-CCO (Legal) dated 23.08.2019, wherein, it is stated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore). It is also submitted that the tax effect in this appeal is less than the threshold limit.

4.In the light of the aforesaid submissions made by the learned standing counsel for the appellant / Revenue, the present appeal, wherein, the tax effect is said to be less than the monetary limit imposed, is dismissed as withdrawn, keeping open the substantial questions of law for determination in an appropriate case. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai

2. The Commissioner of Service Tax-I,
Newry Towers, Plot No.2054, I Block,
2nd Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

+1cc to M/s.S.Muthu Venkataraman, Advocate, S.R.No.10446

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.10638

PMK(CO)
RGA(10/03/2022)