BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Tuesday, the Nineteenth day of December Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice RMT.TEEKAA RAMAN
AND
The Hon`ble Mr.Justice P.B. BALAJI

CMP(MD). No.6018 of 2021
in
CMA(MD).240 of 2019

The Commissioner of GST and Central Excise,
Central Revenue Building
Madurai.

... Petitioner/Appellant

..Vs..

M/s. Tamilnadu Spinning Mills Association
No.2 Karur Road,
Near Beschi College,
Modern Nagar
Dindigul - 624001.

... Respondent/Respondent

Prayer :-

Civil Miscellaneous petition filed U/s.5 of Limitation Act to condone the delay of 40 days in restore the appeal in C.M.A.(MD) No.240 of 2019 to the file of this

Court .

Prayer in CMA(MD).No.240 of 2019:

Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act 1944 r/w Section 83 of the Finance Act 1944, to set aside the Final order No.43192/2018 dated 12.12.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Appeal No.ST/430/2012-DB, arising out of Order-in-Original No.51/2012 dated 28.03.2012 passed by the Commissioner of Central Excise, Madurai.

ORDER:- This Civil Miscellaneous petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.Nandhakumar, Advocate for the Petitioner and of Mr.R.S.Pandiyaraj, Advocate for the respondent, this Court made the following order:

"Initially, the appeal was dismissed as withdrawn. Now, the Commissioner of GST has filed an application for restoration of the appeal on the ground that it was wrongly withdrawn.

2. By an order, dated 04.10.2019, the Division Bench of this Court has dismissed the appeal as withdrawn and the substantial questions of law raises in this appeal are left open.

3. The learned counsel for the respondent would submit that the question covered under law has been settled by the Hon'ble Supreme Court in ***Civil Appeal No.4184 of 2009 in State of West Bengal and others vs. Calcutta Club Limited*** and

the judgment was rendered on 03.10.2019 i.e., a day prior to the passing of the above order and he would state that the question of law is also settled and hence, does not call for restoration.

4. Today, when the matter is taken up for hearing, the learned counsel for the respondent would submit that as per the order of the Hon'ble Supreme Court in ***Civil Appeal No.4184 of 2009 in State of West Bengal and others vs. Calcutta Club Limited*** the question covered under law is settled.

5. In view of the above, we do not find any reason to condone the delay of 40 days in restore the appeal since the law is settled by the Hon'ble Supreme Court and therefore, the request of the learned counsel for the petitioner to condone the delay and to restore the appeal and thereafter pass orders in the main appeal is nothing but futile exercise.

6. Accordingly, this petition is dismissed."

Sd/-
Assistant Registrar(CS-III)

// True Copy //

/12/2023
Sub Assistant Registrar(CS)

am

TO

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

2. The Commissioner of GST and Central Excise,
   Central Revenue Building,
   Madurai 625 002.

3. The Commissioner of Central Excise,
   Madurai.

+1 CC to Mr.R.Nanda Kumar, Advocate, SR57494

+1 CC to Mr.R.S.Pandiyaraj, Advocate, SR57548

ORDER DATED : 19/12/2023

ORDER

CMP(MD). No.6018 of 2021
in
CMA(MD).No.240 of 2019

Giving direction and etc.
as stated within.

AMS/26.12.2023 5P 6C