BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.09.2024**

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A(MD)Nos.441 to 443 of 2018

M/s.SDS Ramicides Crop Science Private Limited,
represented by its Company Secretary(Designation),
Mr.K.Balaji,
11-E, SIPCOT Industrial Estate,
Pudukkottai – 622 022. ... Appellant/Applicant in all C.M.As'

.Vs.

The Commissioner of Central Excise and Service Tax,
No.1, Willims Road,
Cantonment, Thiruchirappalli – 620 001.
...Respondent/Respondent in all C.M.As'

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 35-G of the Central Excise Act, 1944 praying this Court to set aside the impugned Misc.Order No.40546/2017, dated 13.10.2017 passed in E/ROM/40437/2016 in Appeal No.E/208/2011-DB, impugned Misc.Order No.40548/2017, dated 13.10.2017 passed in E/ROM/40438/2016 in Appeal No.E/365/2011-DB and impugned Misc.Order No.40547/2017, dated 13.10.2017 passed in

E/ROM/40439/2016 in Appeal No.E/510/2010-DB by the CESTAT. Chennnai.

For Appellant in all C.M.As' : Mr.Hari Radhakrishnan

For Respondent in all C.M.As' : Mr.Dilip Kumar
Standing Counsel
for Mr.R.Nandakumar,
Senior Standing Counsel

COMMON JUDGMENT

(Order of the Court was made by **P.VELMURUGAN,J)**

These Civil Miscellaneous Appeals are filed seeking to set aside the impugned Misc.Order No.40546/2017, dated 13.10.2017 passed in E/ROM/40437/2016 in Appeal No.E/208/2011-DB, impugned Misc.Order No. 40548/2017, dated 13.10.2017 passed in E/ROM/40438/2016 in Appeal No.E/365/2011-DB and impugned Misc.Order No.40547/2017, dated 13.10.2017 passed in E/ROM/40439/2016 in Appeal No.E/510/2010-DB by the CESTAT, Chennnai.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.After passing an order by the Customs,Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, the appellant herein filed an application for rectification of mistake by the appellant in the said application, the Tribunal passed an order which reads as under:

> *''5.We find that the department has filed appeal before the Apex Court in Civil AppealNos.9888 to 9891 of 2016 and vide order, dated 26.9.2016, on the application for condonation of delay, notice has been issued to the assessee. Since the matter is pending before the Apex Court, we are of the considered view that the applicdation for rectification of mistake before the Tribunal does not merit consideration.''*

4.Now the learned counsel for the appellant would submit that the respondent/Department has given a letter, dated 18.06.2024, in which, the relevant portion reads as under:

> *''2..It is informed that, a total 08 Show Cause notices are kept in ''Call Book'' category, because of a pending Supreme appeal C.A.No.10124-10126/2016(XII). It is informed that the department has filed withdrawal petition of the appeal before the Honourable Apex Court on account of*

Low Monetary value under National Litigation Policy. Accordingly, the disposal of the pending SCNs will be taken up as soon as the Honourable Supreme Court appeals are disposed. This is for your information."

5.The learned counsel for the appellant submitted that since the respondent/Department had agreed to withdraw the appeals, the matter may be listed after withdrawl of the appeals pending before the Honourable Supreme Court, for which, the learned counsel for the respondent would submit that the subject-matter of the appeals pending on the file of Honourable Supreme Court is nothing to do with the present Civil Miscellaneous Appeals.

6.The subject-matter of the appeals are not challenged as abundant items of the appellant.Therefore the respondent can independently proceed with the same and the respondent/Department challenge the order passed by the Customs,Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in Nos.E/510,E.208/2011, E.365/2011, E/40915 – 40918/2015 and now the same is pending with the Honourable Supreme Court. Further pending appeals, the appellant has filed application for rectification of the mistake and for which, the

Tribunal has passed the above said order. Though the learned counsel for the appellant would submit that the appellant is not enttled to get an order in favour of them in the Rectification Application, but however, on a perusal of the order passed by the Tribunal, it is seen that they have nothing to with the merit or entitlement or any mistake that has been committed. But however an order is passed simply stating that the appeal is pending before the Honourable Supreme Court and therefore, the same is under challenge by way of these Civil Miscellaneous Appeals and since the Tribunal while disposing the application for rectification stating nothing about the merits or entitlement or as to whether any mistake committed and it had simply referred to about the pending of the appeal before the Honourable Supreme Court.

7.Therefore, in these circumstances, the orders impugned herein are set aside and the matter is remitted back to file of the Customs,Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai and the Appellate Tribunal is directed to consider the said application for rectification filed by the appellant and pass orders in accordance with law after giving an opportunity of hearing to both the parties and the parties are at liberty to raise their objections, grounds or points, as the case may be, before the Appeallate Tribunal.

8.With the above directions and liberty, the Civil Miscellaneous Appeals stand disposed of. No costs.

(P.V.,J.) **(K.K.R.K.,J.)**
09.09.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Commissioner of Central Excise and Service Tax,
No.1, Willims Road,
Cantonment, Thiruchirappalli – 620 001.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

P.VELMURUGAN,J.
and
K.K.RAMAKRISHNAN,J.

vsn

COMMON JUDGMENT MADE IN

C.M.A(MD)Nos.441 to 443 of 2018

09.09.2024