IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/6/2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2051 of 2011

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

Vs

1. M/s. Trichy Institute of Management Studies (P) Ltd
73/12 Annamalai Nagar
Salai Road
Trichy 620 018.

2. The Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench
Chennai. ...Respondents/Applicants

Prayer: Appeal filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.286 of 2011 dated 7/2/2011 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench at Chennai and uphold the order passed by the Commissioner (Appeals).

For appellant : Mr.M.Santhana Raman

For respondent : Ms.Cyndiya Crishnan for R.1
For R.2 - Tribunal

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

This Appeal has been filed against the Final Order No.286 of 2011 dated 7/2/2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai.

2. The substantial questions of law raised in the instant appeal are:-

> "(i). Whether the Hon'ble Tribunal is legal and correct in following the ratio of the Hon'ble Kerala High Court's decision in the case of Malappuram Distt. Parallel Colleges Association vs. Union of India [2006 (2) STR 321 (Ker.)] in as much as the judgment of the Hon'ble High Court of Kerala was made on the facts of the case and was not to be followed as a precedent?
>
> (ii). Whether the Tribunal's order is legal and correct, despite the TIMS not fulfilling the conditions of the Notification No.10/2003 S.T dated 20/6/2003, when it is an admitted fact that in respect of Alagappa University, TIMS collected fee from the students in two parts, one in the form of Demand Draft favouring the University and the same is sent to the University and that they also collected another part amount for the TIMS directly from the students at the rates prescribed by the University and this amount was meant for conducting classes for the students enrolled?
>
> (iii). Whether the Tribunal has erred in applying the ratio of the decision [Malappuram Distt. Parallel Colleges Association Vs. Union of India [2006 (2) STR 321 (Ker.)], without discussing the facts and its applicability to the instant case which has distinguishable facts?"

3. On this day, when the matter came up for hearing, Mr.M.Santhana Raman, learned Standing Counsel appearing for the appellant submitted that on the basis of the instructions given in Circular No.I/10/10/2016 Legal, dated 21/3/2016, appellant department has instructed him to withdraw the appeal.

4. Placing on record the above submission, while dismissing the Civil Miscellaneous Appeal No.2051 of 2011, as withdrawn, substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs

TO

1. The Excise & Service Tax
 Appellate Tribunal
 South Regional Bench
 Chennai.

+ 1 cc to Mr.K. Magesh, Advocate sR.33961
+ 1 cc to Mr. M. Santhana Raman, Advocate SR.33525

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