IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2016

C O R A M :

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

Civil Miscellaneous Appeal No.28 of 2011

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

Vs.

M/s. Madras Cements Limited
Alathiyur Works
Cement Nagar Post
Senthurai Taluk
Perambalur District - 621 730. ... Respondent/Applicant

Prayer : Appeal filed under Section 35 G of Central Excise Act against the final order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai dated 23.06.2010 in Final Order No.693 of 2010 and restoring the orders of the Lower Authority, against the Order of the Commissioner (Appeals), Trichy dated 18.08.2009 made in A.No.86 of 2008 against the Order of the Deputy Commissioner of Central Excise, Thanjavur, dated 31.01.2008 made in C.No.V/Ch.25/15/46/2007-Cx.Adj.

For Appellant : Mrs. R.K. Sekina Reshma

For Respondent : No Appearance

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 order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai dated 23.06.2010 in No.693 of 2010 with a prayer to restore the orders of the Lower Authority.

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

> "1. Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the restriction contained in Rule 9(1)(b) of the CCR was not attracted against the assessees so as to sustain the duty under the pretext that the additional amount of duty became recoverable from the supplier manufacturer only subsequent to the taking of credit by the assessees on the strength of three supplementary invoices ?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that supplementary invoices on the strength of which disputed credit was taken could not be considered as eligible document, for the reason that additional duty demand was confirmed against the supplier manufacturer only after the assessees had taken the credit on the strength of the supplementary invoices issued by the manufacturer on which correct classification of the goods was shown ?
>
> 3. Whether the Tribunal's order is legal and correct, in the absence of statutory provision to that effect ? "

3. On this day, when the matter came up for hearing, Mrs. R.K. Sekina Reshma, learned Standing Counsel appearing for the department submitted that on the basis of the instructions given in letter F. No. 390/ Misc./ 163/2010 J.C. Dated 17.12.2015, appellant department has instructed her to withdraw the appeal.

4. Placing on record the submission of the learned Standing Counsel, the appeal is dismissed, leaving the substantial questions of law open.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

avr

To

1.The Commissioner of Central Excise
& Service Tax,
Williams Road, Contonment,
Trichy 620 001.

2.The Customs, Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan, 1st Floor,
26, Haddows Road, Chennai 06.

3.The Deputy Commissioner of
Central Excise,
Central Excise Division,
Thanjavur.

+1cc to Mrs.R.K.Sekina Reshma, Advocate, S.R.No.32067

C.M.A. No.28 of 2011

GJ II(CO)
CA(04/07/2016)