IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11/7/2016

C O R A M

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

Civil Miscellaneous Appeal No.3678 of 2014

The Commissioner of Central Excise
26/1 Uthamar Gandhi Salai
Nungambakkam
Chennai 600 034. ... Appellant/Applicant

Vs

1. M/s.I.T.C.Limited
   No.90 Chemiers Road
   Chennai 600 018.

2. Customs Excise and Service Tax
   Appellate Tribunal
   South Zonal Bench
   Sastri Bhawan Annx - 1
   Haddows Road
   Chennai 6. ... Respondents/Respondents

Prayer : Appeal filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.40594 of 2013 dated 20/11/2003 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, against the Order in Appeal No.34 of 2005 (M-I), dated 14.03.2005 passed by the Commissioner (Appeals), Chennai, against the Order in original No.20 of 2004, dated 30.09.2004 passed by the Joint Commissioner of Central Excise, Chennai, against the Show Cause Notice OC No.959/95, dated 21.11.1995 passed by the Superintendent of Central Excise, III-E Range, Chennai.

For appellant : Mr.A.P.Srinivas
Senior Standing Counsel

For respondent : No appearance for R.1

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.40594 of 2013 dated 20/11/2013 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

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

> "1. Whether the Hon'ble Tribunal was correct in allowing the credits taken in RG23A Part II register after expiry of six months from the date of the document when Rule 57 G (2) expressly stipulated six months time limit for taking such credit especially in view of the Hon'ble Supreme Court judgement in the case of Osram Surya Pvt. Ltd., reported in 2002 (142) ELT 5?
>
> 2. Whether the Hon'ble Tribubal was correct in allowing the credits taken in RG23A Part II register after expiry of six months from the date of the document on the ground that entries had been made in the RG23A Part I register when the time limit specified under Rule 57G(2) was expressly for taking of credit and not for receipt of inputs?
>
> 3. Whether the impugned order is sustainable in law when the same Hon'ble Tribunal, Chennai has rendered a conflicting judgment on the same issue vide Final Order 528/2009 dated 4/5/2009 in favour of the Revenue, relying upon the above judgement of the Hon'ble Supreme Court rendered in Osram Surya Pvt Ltd reported in 2002 (142) ELT 5 especially when the conflicting order passed in the case of Hyundai has not been considered while delivering the impugned order?"

3. On this day, when the matter came up for hearing, Mr.A.P.Srinivas, learned Standing Counsel appearing for the Department 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.3242 of 2007, as withdrawn, substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs

To

1.The Customs Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Sastri Bhavan Annx-1,
Haddows Road, Chennai 600 006.

2.The Commissioner of Central Excise,
26/1, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

3.The Joint Commissioner of Central Excise,
O/o.The Commissioner of Central Excise,
Chennai I, 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

4.The Superintendent of Central Excise,
III-E Range, Chennai 101.

+1cc to Mr.A.P.Srinivas, Sr. Standing Counsel, S.R.No.38749

Civil Miscellaneous Appeal No.3678 of 2014

GJ(CO)
CA(04/08/2016)