IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.1429 of 2010

The Commissioner of Central Excise,
Chennai IV Commissionerate,
692, MHU Complex,
Nandanam, Chennai -600 035. .. Appellant/Respondent

Vs.

1.M/s.Alpump Limited,
170-172 Developed Plot,
Industrial Estate,
Perungudi,
Chennai - 600 096.

2.Customs, Excise and Service Tax
Appellate Tribunal,
(represented by the Assistant Registrar),
South Zone Bench,
Shastri Bhavan Annexue,
1st Floor, 26, Haddows Road,
Chennai - 600 006. .. Respondents/Applicant

PRAYER: Appeal filed under Section 35 G of the Central Excise Act, 1944 praying to set aside the Final Order No.1869/09 dated 04.12.2009 passed by the Tribunal and restore the penalty amount of Rs.4,23,934/- under Section 11 AC of the Central Excise Act 1944 imposed in Order-in-Original No.6/2006 dated 30.5.2006 passed by the original adjudicating authority.

For Appellant : Mr.A.P.Srinivas,
Senior Standing Counsel for
Customs and Central Excise

For 1st Respondent : Mr.N.Viswanathan

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

This Appeal has been filed against Final Order No.1869/09 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, dated 7.12.2009.

2. The substantial question of law raised in the instant Appeal is:-

> "Whether the Hon'ble Tribunal, Chennai was correct in law in passing its Final Order No.1869/09, dated 04.12.2009, by reducing the penalty to Rs.10,000/- under Rule 15(1) of Central Excise Rules, 2002 as applicable to contravention of any Rule of Cenvat Credit Rules 2002 as against mandatory equal penalty of Rs.4,23,934/- under Section 11AC of Central Excise Act, 1944 impossible for taking/utilizing wrong credit on account of suppression of facts?

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 letter F. No. 390/ Misc./ 163/2010 J.C. Dated 17.12.2015, appellant department has instructed him 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. No order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

asvm

To

1.The Commissioner of Central Excise,
Chennai IV Commissionerate,
692, MHU Complex,
Nandanam, Chennai -600 035.

2.The Assistant Registrar),
Customs, Excise and Service Tax
Appellate Tribunal,
South Zone Bench,
Shastri Bhavan Annexue,
1st Floor, 26, Haddows Road,
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CMA.No.1429 of 2010

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