IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28/7/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Civil Miscellaneous Appeal No.3052 of 2009

The Commissioner of Central Excise
Chennai II Commissionerate
No.692 MHU Complex
Anna Salai, Nandanam
Chennai 600 035. ...Appellant

Vs.

1. M/s.Automotive Coaches & Components Ltd
   Plot No.C1 & D6
   Sipcot Industrial Complex
   Gummidipoondi 601 201.

2. The Customs, Excise and
   Service Tax Appellate Tribunal
   South Zone Bench
   Shastri Bhavan Annex
   1st Floor, No.26 Haddows Road
   Chennai 600 006. ...Respondents

Prayer: Appeal filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.1006 of 2009 dated 18/8/2009 in Appeal No.E/581 & 582/02 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

For Appellant : Mr.K.Mohana Murali
Standing Counsel
for Customs & Central Excise

For Respondents : Mr.P.R.Ranganath for R.1

Tribunal - for R.2.

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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.1006 of 2009 dated 18/8/2009 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 are:-

> "1. Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that ownership is not a criteria for availing credit of capital goods?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was right in Law in relying on the judgment in the case of M/s.Iljin Automotive Pvt Ltd., Vs. CCE, Chennai, as reported in 2004 (175) ELT 169 (Tri-Chennai) where the facts are totally different?
>
> 3. Whether on the facts and circumstances of the case, the Tribunal having seen that the sub-Rule 7 (4) of CENVAT Credit Rules, provides for Cenvat credit only in respect of capital goods belonging to manufacturer, even if the capital goods are acquired by him on lease, hire purchase or loan agreement from a Financing Company, went wrong in holding that the respondent is entitled to the credit. The respondent has not satisfied any of the conditions mentioned therein, so as to entitle him to claim the credit?"

3. On this day, when the matter came up for hearing, Mr.K.Mohana Murali, 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.3052 of 2009, as withdrawn, substantial question of law raised is left open. No costs.

mvs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Central Excise
 Chennai II Commissionerate
 No.692 MHU Complex
 Anna Salai
 Nandanam
 Chennai 600 035.

2. The Customs, Excise and Service Tax Appellate Tribunal
 South Zone Bench
 Shastri Bhavan Annex
 1st Floor
 No.26 Haddows Road
 Chennai 600 006.

+ 1 cc to Mr.R.Raghavan, Advocate Sr 43496

+ 1 cc to Mr.K.Mohana Murali, Advocate Sr 42660

KR/9/9/16

Civil Miscellaneous Appeal No.3052 of 2009