IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23-02-2017

CORAM:

THE HONOURABLE THE ACTING CHIEF JUSTICE
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.No.1889 of 2011

The Commissioner of Central Excise
No.1, Foulks Compound
Anaimedu, Salem - 636 001 ... Appellant/Respondent

Vs.

1. M/s. Sterling Biotech Ltd.
Sandynallah, Sholur Town Panchayat
Ooty - 643 237

2. The Customs, Excise and Service tax Appellate Tribunal
South Zonal Bench, Shastri Bhavan Annex
26, Haddows Road
Chennai - 600 006
(Not a necessary party to this CMA) ... Respondents

Civil Miscellaneous Appeals under new Section 35G of the Central Excise Act, 1944 against the CESTAT's Final order No.1216/2010 dated 01-12-2010 on the file of the Honourable Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai received on 27-12-2010.

For appellant :: Mr. K.S. Ramasamy
For respondents:: Not Ready for R1
R2 Tribunal

JUDGMENT

(HULUVADI G. RAMESH,J.)

The civil miscellaneous appeal is filed against the order of Customs, Excise and Service Tax Appellate Tribunal in final order No.1760 of 2009 dated 01-12-2010 on the file of the Honourable Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai.

2. The following substantial question of law is raised in the civil miscellaneous appeal:

"(i) Whether the CESTAT, Chennai, was correct in holding that the respondent is entitled to avail the CENVAT credit on outdoor 'catering services' with respect of which the cost is borne by the respondent despite the fact that outdoor catering service does not fall under the ambit of the definition of "Input service" specified under Rule 2(1) of Cenvat Credit Rules, 2004, as the catering/canteen services are neither used in or in relation to the manufacture or clearance of final product nor can it be said, to be an activity relating to business? ; and

(ii) Whether the CESTAT, Chennai is right in holding that the use of the outdoor catering services is integrally connected with business of manufacturing Gelatin and therefore credit of service tax paid on outdoor catering services would be allowable in spite of specific ruling of the High Court, Kolkata Bench in the case of M/s.Peico Electronics & Electricals Ltd. Vs. Commissioner of Income Tax-IV Kolkatta (Appeal No.353 of 2004) reported in 2001 ITR 477 to the effect that even if a factory has to maintain a canteen, it cannot be said that it is an integral part of manufacture or production carried on by the assessee?

3. The learned counsel bring to our notice, Circular in C.No.I/10/10/2016 Legal dated 21-03-2016, wherein it is stated that the Central Board of Excise and Customs, New Delhi vide letter F.No.390/Misc./163/2010 J.C. dated 17-12-2015 has fixed the monetary ceiling for filing appeals before the High Court at Rs.15,00,000/-. Learned counsel for the Department thus seeks to withdraw the appeal.

4. In view of the above, without going into the merits and preserving the question of law for adjudication in an appropriate case, the civil miscellaneous appeal is dismissed as withdrawn. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

glp

To

1. The Commissioner of Central Excise
No.1 Foulks Compound,
Anaimedu
Salem-636 001

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 M/s.K.S.Ramasamy Advocate sr 11850

C.M.A.No.1889 of 2011

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aa20/03/2017