IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mrs.JUSTICE BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No. 2483 of 2016

The Commissioner of Central Excise & Service Tax
Central Excise Commissionerate
No.1 Williams Road
Cantonment
Tiruchirapalli 620 001. ... Appellant

Vs

1. The Customs Excise and Service Tax Appellate Tribunal
South Zone Bench
Shastri Bhavan Annex, I Floor
26 Haddows Road
Chennai 600 006.

2. M/s. Dalmia Cements (Bharat) Ltd
Dalmiapuram
Trichy. ... Respondents.

Appeal filed under Section 35 G of the Central Excise Act, 1944 against the Final Order No.40890 of 2014, dated 16/9/2014 on the file of the Customs, Excise and service Tax Appellable Tribunal, Chennai Bench, Chennai.

For Appellant ... Mrs.R.Hemalatha
Standing Counsel

For Respondents ... R.1 - Tribunal
Ms.Cynthia Crishnan
for Mr.S.Muthu Venkatesan
for R.2.

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Instant Civil Miscellaneous Appeal, is filed by the Commissioner of Central Excise and Service Tax, against the Final Order No.40890 of 2014, dated 16/9/2014, on the following substantial questions of law:-

> "1. Whether the Hon'ble Tribunal is correct in relying upon the decision of the Hon'ble Karnataka High Court in the case of CCE, Bangalore Vs. SLR Steels reported in 2012 (280) ELT 176 (Kar) holding that the credit of duty paid on steel and cement used in construction of storage tanks were eligible for credit in terms of Rule 2 (a) (A) (i) to (vii) and 2 (k) of Cenvat Credit Rules, 2004, when there is a decision of the Apex Court in the case of Delhi Cloth and General Mills Co Ltd., Vs. UOI (1997) (1) ELT (J 199) (SC) (Constitution Bench), wherein the Apex Court has held that to become goods, an article must be something which can ordinarily come to the market to be bought and sold. Further, in the case of Bharthi Airtel Vs. CCE reported in 2014 (35) STR 865 held that they were immovable and fixed to earth and not excisable and could not be regards as inputs and the same will also not fall within the definition of capital goods under Rule 2 (a) of the Cenvat Credit Rules, 2004.
>
> (ii). Whether in view of the varying interpretation of the terms "input" and "capital goods" in various decisions. The Hon'ble Cestat, Chennai was right in interpreting the term in the manner as in the order."

2. On 11/7/2017, when the instant Civil Miscellaneous Appeal, came up for hearing, both the learned counsel for the parties submitted that the subject matter under challenge, is covered by a decision of this Court, made in C.M.A.Nos.3641 to 3643 of 2011, etc., batch, dated 10/7/2017.

3. On this day, Ms.Cynthia Crishnan, learned Counsel for the second respondent produced a copy of the common order, made in C.M.A.Nos.3641 to 3643 of 2011, etc., batch.

4. While adverting to the rival submissions, a Hon'ble Division Bench of this Court, has answered similar substantial questions of law, now raised in the instant Civil Miscellaneous Appeal, in favour of the assessee and against the revenue.

5. Similar substantial questions of law, were also considered in Civil Miscellaneous Appeal Nos.3814 of 2011, 2695 and 2696 of 2012.

6. Following the above said two decisions, the instant Civil Miscellaneous Appeal is dismissed, answering the substantial questions of law, against the revenue. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Customs Excise and Service Tax Appellate Tribunal
South Zone Bench
Shastri Bhavan Annex, I Floor
26 Haddows Road
Chennai 600 006.

+1cc to M/s.R.Hemalatha ,Standing Counsel for Customs, Central Excise, S.R.No.52580

+1cc to M/s.S.Muthuvenkataraman, Advocate, S.R.No.52656

C.M.A. No.2483 of 2016

MP(CO)
CU(30/08/2017)