IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.01.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH

AND

The Hon'ble Dr. Justice ANITA SUMANTH

C.M.A.No.2796 of 2011

The Commissioner of Central
Excise and Service Tax,
1 Williams Road, Cantonment,
Tiruchirapalli 620 001. .. Appellant

Versus

M/s.Tamilnadu Newsprint and Papers Ltd.,
Kagithapuram,
Pugalur,
Karur District 639 136. .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final order No.601/2010 dated 04.06.2010 read with Misc.Order No.148/2011 dated 11.03.2011 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai-6.

For Appellant .. Mr. A.P.Srinivas
Central Govt.Standing counsel

JUDGMENT

The Civil Miscellaneous Appeal filed by the Central Excise Department calling in question the correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai-6 dated 4.6.2010 in Final order No.601/2010 dated 04.06.2010 read with Misc.Order No.148/2011 dated 11.03.2011, has been admitted on 29.9.2011 for consideration of the following substantial questions of law;

> "(i) Whether on the facts and circumstances of the case, the Tribunal is right in holding a view that the ratio decidendi of Indian National Shipowners Association vs. Union of India (2009(13) STR 235 (Bom.) to arrive at a conclusion that service tax would not be leviable before 18.4.2006, even on services received in India, when provided by a non-resident?
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal is right in law holding a contrary view especially when Indian National Shipowners Association supra does not apply to the cases where taxable service provided by a non-resident not having any office/establishment in India is received in India as has been held in the cases of (i) M/s.Hindustan Zinc Ltd., v. Commissioner of Central Excise, Jaipur, by a larger Bench of CESTAT [2008(11) STR 338 (T-LB)] and affirmed by the Hon'ble Supreme Court as reported in [2009(14) STR J125

(S.C)] (ii) UOI vs. M/s.Aditya Cement by the Hon'ble High Court of Rajasthan [2008(10) STR 228 (Raj)] wherein it has been held that service tax liability on services received in India from a non-resident arises with effect from 1.1.2005 consequent upon issuance of notification No.36/2004-ST, dated 31.12.2004 under section 68 (2) of the Finance Act, 1994, read with rule 2(1)(d)(iv) of the Service Tax Rules, 1994?

(iii) Whether on the facts and circumstances of the case, the Tribunal is right in law by proceeding to decide the issue of liability to pay service tax, which was never under dispute nor any issue for determination in appeal of the department especially when the issue under consideration before the Hon'ble Tribunal was whether or not the first respondent were eligible to utilise CENVAT credit for payment of service tax on foreign consulting engineer services treating it as an output service for the payment of service tax?

2. Circular instruction issued by the Central Board of Excise and Customs, New Delhi in F.No.390/Misc./163/2010 J.C., dated 17.12.2015 stipulates that appeals shall not be filed pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.15 lakhs. In the instant case, the tax effect is less than the monetary limit imposed and the appeal is, hence, dismissed as not pressed, preserving the substantial

questions of law for determination in an appropriate case. No costs.

Sd/
Assistant Registrar

/True copy/
Sub Assistant Registrar

To

The Customs, Excise and Service Tax
Appellate Tribunal (CESTAT),
South Zonal Bench, Chennai-6.

C.M.A.No.2796 of 2011

SDR 08.03.2017