IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

C O R A M

THE HONOURABLE **MR.JUSTICE S. MANIKUMAR**
and
THE HONOURABLE **MRS.JUSTICE V. BHAVANI SUBBAROYAN**

C.M.A.No.2238 of 2017
C.M.P.No.11893 of 2017

The Commissioner of Central Excise,
Salem ... Appellant

v.

1. M/s.Kandagiri Spinning Mills (P) Ltd.,
   Salem.

2. The Customs Excise and Service
   Tax Appellate Tribunal,
   South Zonal Bench,
   1st Floor, Shastri Bhavan Annexe,
   Haddows Road, Chennai 600 006. ... Respondents

Appeal filed under Section 35G of the Central Excise Act, 1944, against the final order No.922 of 2003, dated 04.11.2003 (Common Final Order No.919 to 927 of 2003), on the file of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) (Southern Regional Branch), Chennai.

For Appellant : Mr.V.Sundareswaran

O R D E R

(Order of the Court was made by **S. MANIKUMAR, J.**)

Arising out of the final order No.922 of 2003, dated 04.11.2003 (Common Final Order No.919 to 927 of 2003), on the file of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) (Southern Regional Branch), Chennai, the Commissioner of Central Excise, Salem, has filed the instant appeal, on the following substantial questions of law,

> "Whether the Hon'ble CESTAT, South Zonal Bench, Chennai is correct in allowing Modvat Credit of duty paid on capital goods/spares namely carding and combing machines producing final products, viz., sliver/combed/carded cotton falling under Chapter Heading 52.02 of the Schedule to the Central Excise Tariff Act, 1985, on the reasoning that such goods are eligible capital goods, when this heading remained specifically excluded from the purview of capital goods under erstwhile Rule 57Q of the Central Excise Rules, 1944, as it stood during the material time, by overriding the legal provisions."

2. On this day, when the matter came up for hearing, Mr.V.Sundareswaran, learned counsel appearing for the appellant submitted that earlier, when the Commissioner of Customs and Central Excise, Salem, filed C.M.A.Nos.3616 to 3618 to 2005, challenging the final order Nos.919 to 927 of 2003, dated 04.11.2003, passed by the CESTAT, Chennai, after hearing the learned counsel for the appellant therein and taking note of the decision of this Court in C.M.A.No.350 of 2005, dated 06.12.2013, in the matter of Commissioner of Central Excise v. Thuran Spinning Mills Pvt. Ltd., Vadasandur and another, a Hon'ble Division Bench of this Court, vide order, dated 18.07.2014, dismissed the above appeals, answering the substantial questions of law in negative against the revenue. He fairly submitted that the abovesaid decision would squarely apply to the facts of this case. At Paragraphs 2 and 3 of the common order made in C.M.A.Nos.3616 to 3618 to 2005, dated 18.07.2014, a Hon'ble Division Bench of this Court held as follows:

> "2. The learned counsel standing counsel appearing for the Revenue concedes that the issue raised in the present appeals is covered by a decision of a Division Bench of this Court, dated 06.12.2013 made in C.M.A.No.350 of 2005 (Commissioner of Central Excise v. Thuran Spinning Mills Pvt.

Ltd., Vadasandur and another), wherein, it was held that as under:

"4. Learned standing counsel fairly placed before this Court an order of this Court in Commissioner of Central Excise, Salem v. Singaravelar Spinning Mills (P) Ltd., (2009 (241) ELT 497), to which one of us (T.S.Sivagnanam, J.) is a party, wherein, after referring to the decisions of the Delhi High Court in Modi Carpets Ltd., v. Union of India, (1997) 91 ELT 285 and the Supreme Court in Bhor Industries Ltd., v. Collector, 1989 (40) ELT 280 (SC), ultimately held that the assessee would be entitled to modvat credit of duty paid on capital goods/spares, namely, carding and combing machines producing products namely silver/combed/carded cotton falling under Chapter Heading 52.02 of the Schedule to the Central Excise Tariff Act, 1985, even when the Heading remained specifically excluded from the purview of the capital goods under Rule 570, as it stood during the relevant point of time. This Court pointed out that the relief should not be denied on the capital goods used in the manufacture of intermediate products exempt from payment of duty which were used captively in the manufacture of finished goods chargeable to duty. In the said judgment, this Court also referred to the Tribunal's Order allowing the assessee's claim based on the Circular No.665/666 2002-CX, dated 25.09.2002. It is also seen that Commissioner of Central

Excise, Salem v. Singaravelar Spinning Mills (P) Ltd., (2009 (241) ELT 497), which was relied on by the Tribunal was also subject matter of decision before this Court in the decision reported in 2010 ELT 413, wherein, this Court rejected the revenue's case on similar question raised. Following the decision of the Court referred to above, there is no hesitation in rejecting the revenue's appeal, thereby confirm the order of the Tribunal."

3. In the light of the decision in Commissioner of Central Excise v. Thuran Spinning Mills Pvt. Ltd., Vadasandur case, referred supra, the substantial question of law, is answered in the negative and against the revenue."

3. We have gone the material on record. Decisions stated supra, squarely apply to the facts on hand. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (V.B.S., J.)
20.07.2017

Index: Yes
Internet: Yes
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To

The Customs Excise and Service Tax Appellate Tribunal,
Southern Regional Branch, Chennai.

S. MANIKUMAR, J.
AND
V. BHAVANI SUBBAROYAN, J.

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