**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 01.02.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

**C.M.A.No.1116 of 2010**

Commissioner of Central Excise,
Chennai-I Commissionerate,
26/1 (Old No.121), M.G.Road,
Chennai 600 034. .. Appellant

Versus

M/s.United Metal Industries,
98, Basin Road,
Chennai 600 019 .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final order No. 1858 of 2009 dated 13.12.2009 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

For Respondent .. Not ready notice

**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 3.12.2009 in Final order No. 1858/09, has been admitted on 28.4.2010 for consideration of the following substantial questions of law;

> "(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in setting aside the levy of interest and imposition of penalty without considering Rule 14 of CENVAT Credit Rules, 2004?
>
> (ii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in setting aside the levy of interest and imposition of penalty when the respondent availed suo motu CENVAT credit without filing of refund claim under Section 11B? and
>
> (iii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in setting aside the levy of interest and imposition of penalty when the respondent taking of credit of refund without sanction by the proper officer and all types of refund have to be filed under section 11B of the Central Excise Act and no suo motu refund can be taken unless and until Department is satisfied

that the incidence of duty has not been passed on?"

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. Consequently, the connected M.P.No.1 of 2009 is closed.

**(H.G.R.,J) (A.S.M.,J)**
**01.02.2017**

msr
Index: Yes/No

To

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

**HULUVADI G.RAMESH, J.**
**&**
**DR.ANITA SUMANTH, J.**

msr

**C.M.A.No.1116 of 2010**

**01.02.2017**