IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

C.M.A.No.964 of 2010
and
M.P.No.1 of 2010

The Commissioner of Central Excise,
Coimbatore. ... Appellant/Respondent

Versus

M/s.BAPL Industries Limited,
Bhuradia Nagar,
Thamaraikulam, Pollachi. ... Respondent/Applicant

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order No.1304 of 2009 dated 16.9.2009 in Appeal No.S/20/2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant : Mr.K.S.Ramasamy

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order of the Customs, Excise and Service Tax Appellate Tribunal in Final Order No.1304 of 2009 dated 16.9.2009.

2. The following substantial questions of law are raised :

"(i) Whether the Honourable Tribunal is right in relying on its own decisions passed in the case of India Cements Ltd. Vs. CCE Salem (2007(7) STR 569), R.R.D Tex Pvt. Ltd. Vs. CCE Salem (2007 (8) STR 186) and Pallipalayam Spinners Pvt. Ltd. Vs. CCE Salem (2008(9) STR 544) as a finality has not reached and all the cited judgments have been challenged by the Department and appeals have been filed against them?
(ii) Whether the Tribunal is right in not considering that the assessee had not provided any 'output services' and had received services during the disputed period and they are not entitled to utilize input service tax credit for

payment of service tax on Goods Transport Agency Services availed in connection with removal of final product from their factory as per Rule 2 (p) of the Cenvat Credit Rules, 2004?"

3. The learned counsel brought to our notice, Circular in C.No.I/10/10/2016 Legal dated 21.3.2016, 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the questions of law for adjudication in an appropriate case, this Civil Miscellaneous Appeal is dismissed as withdrawn. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssk

To

1.The Customs, Excise and Service Tax
Appellate Tribunal,
South Zonal Bench, Chennai 600 006.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.S.Ramasamy, Advocate, S.R.No.6859

C.M.A.No.964 of 2010

KJI(CO)
CA(28/02/2017)