IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. No.1809 of 2017

The Commissioner of Central Excise
and Service Tax,
1, Williams Road, Cantonment,
Tiruchirappalli – 620 001 ... Appellant/Respondent

-vs-

M/s.Veesons Energy Systems Pvt Ltd.,
C-13/14/2, Industrial Estate,
Old CTO Building,
Tiruchirappalli-620 005 ... Respondent/Appellant

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order of the Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, dated 21.10.2016, in Final Order No.42032/2016 against the order of the Commissioner of Central Excise (Appeals-II) Trichirappalli in Appeal No.10/2016 dated 8.2.2016 against the order of the Commissioner of Central Excise and Service Tax, Trichirapalli in C.No. V/Ch.84/15/44/2013-C.Ex.Adj. dated 28.02.2015.

For Appellant : Mrs.R.Hemalatha

For Respondent : Mr.PR.Ranganath for
Mr.R.Raghavan
and Mr.N.Murali

J U D G M E N T

[Delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai in Final Order No.42032/2016, dated 21.10.2016.

2.Heard Mrs.R.Hemalatha, learned Counsel for the Appellant and Mr.PR.Ranganath, learned counsel for Mr.R.Raghavan, for the Respondent.

3.This Appeal has been admitted on 29.08.2017, on the following Substantial Questions of Law:

> "(a)Whether the Hon'ble Tribunal is correct in not resorting to Literal Rule of Interpretation when the scope of capital goods was very clear and unambiguous in view of Rule 4(2)(a) of the Cenvat Credit Rules, 2004, and Rule 4(5)(a) of the CenVat Credit Rules, 2004, leaving no chance for any other interpretation?
>
> (2)Whether on the facts and circumstances of the case, the Tribunal is right in law in allowing the appeal when the statutory provisions are very clear that capital goods must be received and installed in the factory for availment of Credit.
>
> (3)Whether the Tribunal's order is legal and correct, in the absence of statutory provision to that effect?"

4.It may not be necessary for this Court to examine the above substantial questions of law, in the light of the fact that the tax involved in the instant case, which is in the nature of wrong credit of Rs.25,57,945/- on the capital goods, which is less than the threshold limit fixed by the Central Board of Indirect Taxes and Customs vide instruction dated 11.7.2018. In fact, wherever cases are less than the monetary limit of Rs.50,00,000/-, in so far as High Courts are concerned, the Department has been directed not to pursue the appeal or even withdraw the same. Further, in this regard, there are no specific written instructions to the learned Counsel for the Revenue.

5. Be that as it may, it is seen that the appeal has been filed by the Revenue, which arose out of an order passed by the Tribunal dated 21.10.2016. The Original Authority sought to recover the CENVAT credit availed by the assessee to the tune of Rs.25,57,945/- together with interest while imposing penalty equivalent to the amount sought to be recovered as CENVAT credit availed. Thus, the monetary limit, involved in the instant case, being well below the amount fixed in the instruction dated 11.7.2018, we hold that the Department cannot pursue this appeal.

6.Hence, for this reason alone, the above Civil Miscellaneous Appeal stands dismissed and the substantial questions of law are left open for consideration. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Customs Excise and Service Tax Appellate Tribunal,
   Chennai Bench, Chennai.

2.The Commissioner of Central,
  Excise (Appeal No.-II)
  Tiruchirappalli.

3.The Commissioner of Central Excise and Service Tax,
  No.I, Williams Road,
  Contonment,
  Tiruchirappalli - 620 001.

+1cc to Mr.R.Raghavan, Advocate, S.R.No.62756

C.M.A.No.1809 of 2017

SVN(CO)

rrs 28/09/2018.