In the High Court of Judicature at Madras

Dated : 30.08.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2475 of 2017

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem-636 001. ... Appellant/Appellant

-vs-

M/s.V.Thangavel & Sons P Ltd.,
Anagur Road,
Komarapalayam-638 183. ... Respondent/Respondent

APPEAL under Section 35G of the Central Excise Act, 1944 to set aside the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.40406 of 2014 dated 18.07.2014 and restore the Order-in-Original of the Adjudicating Authority.

For Appellant : Mr.V.Sundareswaran, SSC
For Respondent : Mr.S.Jaikumar

JUDGMENT
[Delivered by T.S.SIVAGNANAM,J.]

Heard Mr.V.Sundareswaran, learned Senior Standing Counsel for the appellant.

2. This appeal, by the Revenue, is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Final Order No.40406 of 2014 dated 18.07.2014.

3. The above appeal has been admitted on the following substantial questions of law.

> "(a) Whether the Tribunal was correct in following the order reported in (i) 2011 (23) STR 265 in the case of CCE vs. Lakshmi Tech & Engg (Tri-Chennai) and 2013-TIOL-1512: S.S.Engineers vs. CCE (Tri-Mum) without appreciating the facts of the case?

(ii) The order of the Tribunal in assuming that the appellant had admitted that the respondents are eligible for availment of CENVAT Credit is perverse and contrary to the admitted facts of the case.

(iii) Whether the Tribunal was justified in ignoring the law that the respondent having opted to claim absolute exemption under Not.No.30/2004-CE dt.09.07.2004 vide declaration 03.04.2006 with effect from 01.04.2006 on the sale of finished products, ought not to have utilized the lapsed CENVAT credit in view of Rule 11(3) (ii) of CENVAT Credit Rules, 2004, unless the option for absolute exemption under Not.30/2004-CE dt.09/07/2004 is revoked by necessary intimation and opting for optional exemption under Not.No.29/2004-CE dt.07/09/2004 to the department.

(iv) Whether the Tribunal was justified in over looking the provision under Rule 2(I)(ii) and 2 (k) of the CENVAT Credit Rules, 2004 read with sec.94(2)(ee) and sec.94(2)(eee) of the Finance Act, 1994.

4. The learned Senior Standing Counsel for the appellant has placed before this Court a communication sent by the Assistant Commissioner (Legal), Office of the Commissioner of GST and Central Excise, Salem, dated 09.08.2018 stating that on account of the monetary limit in this appeal, which is lesser than the threshold fixed by the Board's circular dated 11.7.2018, he seeks permission to withdraw the appeal.

5. The communication dated 09.08.2018 is placed on record and this civil miscellaneous appeal is dismissed as withdrawn and the substantial questions of law, raised in this appeal, are left open. No costs.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

abr/sni

To
1.The Customs, Excise and Service Tax Appellate Tribunal, No.26, Sastri
Bhavan Annexe Building, Haddows Road, Chennai-6.

2. The Commissioner of Central Excise
   No.1 Foulks Compound
   Anai Medu
   Salem 636 001.

3. The Customs Excise and Service Tax appellate Tribunal
   South Zonal Bench
   Chennai.

+1 CC to Mr.S. Jaikumar, Advocate sr 59556.

VBA(CO)
SP(19/09/2018)