IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM :

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

Civil Miscellaneous Appeal No.2749 of 2017

The Commissioner of Central Excise,
Puducherry Commissionerate,
Goubert Avenue, Beach Road,
Puducherry-605 001. .. Appellant

Vs.

M/s.Jyothi Laboratories Ltd.,
Thethambakkam Village,
Ujala Nagar, Suthukeni Post,
Puducherry-605 502. .. Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act against the Final Order No.41527/2015, dated 11.11.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Southern Regional Bench, Chennai.

For Appellant : Mr.A.P.Srinivas
Senior Standing Counsel

For Respondent : Mr.A.Lawrence,
for M/s.Lakshmi Kumaran

J U D G M E N T

[Judgement of the Court was 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, South Zonal Bench, Chennai, in Final Order No.41527/2015, dated 11.11.2015.

2.This appeal has been admitted vide order dated 12.09.2017 on the following substantial questions of law:

> "1. Whether in the facts and circumstances above, the Tribunal is justified in holding that the first respondent is eligible to avail CENVAT Credit on the broadcasting services done by third party advertisement agencies who are an intermediary only?
>
> 2. Whether in the facts and circumstances, the Tribunal is justified in allowing the first respondent's appeal by passing Rule 9 of the CENVAT Credit Rules which prescribe eligible documents for availing Cenvat Credit ?"

3. 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 is less than the threshold limit fixed by the Central Board of Indirect Taxes and Customs, vide instruction dated 11.07.2018. In fact, wherever cases are less than the monetary limit of Rs.50,00,000/-, insofar as High Courts are concerned, the Department was directed not to pursue the appeal or even withdraw the same. Further, in this regard, there is no specific written instructions to the learned Senior Standing Counsel for the Revenue.

4. Be that as it may, it is seen that the appeal has been filed by the Revenue, which arose out of a order passed by the Additional Commissioner on 10.10.2011. The Department was aggrieved by the order of the Tribunal, insofar as the allowing the appeal qua the setting aside the order of recovery of CENVAT credit of the service tax paid is concerned. The monetary limit, involved in the instant case, being well below the amount fixed in the instruction dated 11.07.2018, we hold that the Department cannot proceed with this appeal. Hence, for this reason alone, the appeal stands dismissed and the substantial questions of law are left open for consideration. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road, Chennai – 600 006.

+1 cc to Mr.A.P.Srinivas, Advocate SR.No.59030

C.M.A.No.2749 of 2017

MG
CSL/17.10.2018