THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CEA.NO.174 OF 2018

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 35G of the Central Excise Act, 1944, is preferred against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench, Hyderabad, in Appeal No.E/1893/2010 dated 30.01.2018. The respondent herein cleared cement to an SEZ developer without payment of duty, and availed CENVAT credit on common inputs and input services. A show cause notice was issued, and the proposed duty was confirmed by the Adjudicating Authority. On the ground that the assessee had failed to maintain separate accounts for common inputs and input services, they were held liable to pay 10% duty on the value of the cement cleared to the SEZ developer.

The Tribunal relied on the judgment of the CESTAT, Bangalore in **Sujana Metal Products Ltd., v. Commissioner of Central Excise, Hyderabad**[1], the appeal preferred against which was dismissed by this Court in **Commissioner v. Sujana Metal Products Ltd**[2] following the judgment in **Union of India v. Steel Authority of India Ltd.**[3]

It has not been disputed before us by Mrs. Sundari R. Pisupati, learned Senior Standing Counsel for Central Excise, Customs and Service Tax, that the subject matter of this appeal is covered against the revenue, and in favour of the assessee, by the

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[1] **2011 (273) ELT 112 (Tri-Bang)**
[2] **2016 (342) ELT A115 (AP)**
[3] **2013 (297) ELT 166 (Chhattisgarh)**

judgment of this Court in **Commissioner v. Sujana Metal Products Ltd**[2]. It is her case that the revenue had preferred an appeal to the Supreme Court; and the Special Leave Petition (SLP) filed by them is still pending.

Mere pendency of the SLP would not obliterate the law declared by a Division Bench of this Court; and the decision rendered therein would be binding on a co-ordinate Bench. As it is not disputed before us that the question of law, raised in this appeal, is covered against the revenue by the aforesaid judgment of this Court, this appeal is also dismissed following the law declared in **Commissioner v. Sujana Metal Products Ltd**[2]. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

19th September 2018
RRB