IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2019

CORAM

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

Civil Miscellaneous Appeal Nos.298 and 299 of 2009

Commissioner of Central Excise,
Chennai-I Commissionerate,
26/1 (Old No.121), M.G.Road,
Chennai-600 034. .. Appellant in both Appeals

-vs-

1.M/s.KCP Ltd.,
Tiruvottiyur,
Chennai-600 019.

2.Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe 1st Floor,
26, Haddows Road,
Chennai-600 006. .. Respondents in both Appeals

APPEALS under Section 35-G of the Central Excise Act, 1944 to set aside the order dated 06.08.2007 made in Final Order Nos.978 and 979/07 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeals Nos.E/950/2003/MAS & E/1038/2003/MAS.

For Appellant : Mr.A.P.Srinivas,
(In both Appeals) Senior Standing Counsel

For Respondent-1: Ms.Kanthi Visalakshi,
(In both Appeals) for Mr.G.RM.Palaniappan

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

These appeals have been filed by the Revenue under Section 35-G of the Central Excise Act, 1944, challenging the order dated 06.08.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for brevity "the Tribunal"), in Final Order Nos.978 and 979/07.

2.The above appeals have been admitted, on 17.02.2009, on the following substantial questions of law:-

> "(i) Whether the second respondent CESTAT is right in allowing the first respondent to avail the Cenvat Credit to the tune of Rs.35,26,916/- from December 2000 to 15.1.2002 and Rs.34,98,847/- from 16.1.2002 to 31.12.2002 in terms of rule 6(3) (b) particularly when the first respondent is maintaining separate accounts for inputs used in exempted as well as dutiable products.
>
> (ii) Whether the second respondent CESTAT is right in allowing the first respondent to avail the Cenvat Credit particularly when in accordance with rule 6(1) & (2) Cenvat credit cannot be allowed on such quantity of inputs which are used in the manufacture of exempted goods.
>
> (iii) Whether the second respondent CESTAT is right in holding that the Explanation III added to Rule 6(3) of Cenvat Excise Rules 2004 is effective only from 16.5.2005 the date of publication in the Gazette, particularly when the clarification is explanatory in nature."

3.Heard Mr.A.P.Srinivas, learned Senior Standing Counsel for the appellant/Revenue; and Ms.Kanthi Visalakshi, learned counsel for Mr.G.RM.Palaniappan, learned counsel for the respondent/assessee.

4.The learned counsel appearing for the assessee submits that the appeals filed by the Revenue cannot be pursued by the Revenue on account of low tax effect.

5.Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the appellant submitted that he has no written instructions to the said effect.

6.We have perused the order impugned before us as well as the orders passed by the Commissioner of Central Excise (Appeals), Chennai, which show that the demand is less than Rs.40,00,000/- (Rupees Forty Lakhs Only). Therefore, the appeals filed by the Revenue stand dismissed on account of low tax effect leaving the substantial questions of law open. No costs. The Revenue is at liberty to seek for restoration of appeals if at a later point of time, it is found that the tax effect is above the threshold limit or to fall under the exceptional clauses mentioned in the Circular.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Central Excise,
Chennai-I Commissionerate,
26/1 (Old No.121), M.G.Road, Chennai-600 034.

+1cc to Mr.Muthuvenkataraman, Advocate, S.R.No. 19636
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 19530

C.M.A.Nos.298 and 299 of 2009

LN(CO)
GN(29/05/2019)