In the High Court of Judicature at Madras
Dated : 02.4.2019
Coram :
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN
R.C.No.11 of 2007 & CMP.No.7548 of 2018

The Commissioner of Central Excise, Coimbatore-18. ...Applicant/Petitioner

Vs

M/s.Amaravathi Cooperative Sugar Mills Ltd., Krishnapuram, Udumalpet Taluk, Coimbatore Dist. ...Respondent/Respondent

REFERENCE CASE under Section 35H(4) of the Central Excise Act against the order dated 24.5.2002 in Final Order No.606 of 2002 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Applicant : Mr.S.Rajasekar for Mr.A.P.Srinivas, SSC

Order of the Court was made by T.S.SIVAGNANAM,J

The above reference case has been filed on the following substantial questions of law :

> "i. Whether the CEGAT is correct in law in allowing the invalid invoice raised under Rule 52A by the distillery unit, which is not the manufacturer of molasses, as valid document and allowing the MODVAT credit so availed on the basis of the invoices raised by themselves i.e. distillery unit particularly when Rule 52A permits only the manufacture to issue invoices and Rule 57G provides for availment of MODVAT credit only on the basis of an invoice issued by the manufacturer of inputs ?
>
> ii. Whether the CEGAT is correct in law in considering the additional grounds, which was not agitated by the appellant either before the Original Authority or the Appellate Authority raised by the appellant as regards treatment of both the wings i.e. sugar plant and distillery unit and deciding the issue in favour of the appellant without hearing the view of the Department in

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contravention of Rule 10 of the CEGAT Rules, 1982 ? and

iii. Whether the CEGAT is correct in law in treating both the sugar plant and distillery plant as one unit, especially when both are separately registered under the Central Excise Rules and are separated by a distance of about 500 meters and with a public road passing in between as shown in the ground plan submitted by the assessee ?”

2. A letter dated 19.2.2019 has been received from the office of the Principal Commissioner of GST and Central Excise, Headquarters, Legal and Prosecution Section, Coimbatore-18, signed by the Commissioner and addressed to the Registrar Judicial of this Court seeking to list the case for withdrawal. Based on the said letter, the reference case is listed today under the caption 'for withdrawal'.

3. In view of the said letter, the above reference case is dismissed as withdrawn. Consequently, the connected CMP is also dismissed. The questions of law are left open.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
No.26, Haddows Road, Shastri Bhavan Annexe, I Floor, Chennai.

2.The Commissioner of Central
Excise, Coimbatore-18.

+1cc to M/s.V.Balasubramanian, Advocate sr.32616
+1cc to Mr.A.P.Srinivas, Advocate sr.31542

R.C.No.11 of 2007

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nr 29/05/2019

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