BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **04.10.2019**
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE R.THARANI

C.M.A.(MD).No.546 of 2012

Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Thirunelveli-627007 ... Appellant/Respondent

Vs.

M/s.The India Cements Ltd,
Sankar Nagar,
Tirunelveli-627 357 ... Respondent/Appellant

PRAYER: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act 1944, to set aside the Final Order No.855/2011 dated 27.07.2011 passed by the CESTAT, Chennai in Appeal No.E/76/10 arising out of Order-in-Original No.08/COMMR/CE/2009 dated 12.11.2009 passed by the Commissioner of Central Excise, Tirunelveli.

For Appellant : Mr.R.Aravindan
For Respondent : Mr.R.Velmurugan

JUDGMENT

[Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.Aravindan, learned counsel appearing for the appellant and Mr.R.Velmurugan, learned counsel appearing for the the respondent.

2.This appeal has been filed by the Revenue challenging the order passed by the Customs Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai, in final Order No. 855/2011 dated 27.07.2011.

3.This appeal has been admitted on the following substantial questions of law,

> "*(1)Whether Customs, Excise and Service Tax Appellate Tribunal is correct in remanding the case to the Original Authority with a direction to take a fresh decision on the basis of the judgment of Karnataka High*

Court in the case of ABB Ltd. Vs. Commissioner, LTU, Bangalore, while the Punjab and Haryana High Court took a diametrically opposite decision in its judgment in the case of Gujarat Ambuja Cements vs. Commissioner, on identical issue?

(2)Whether transportation of final products beyond the place of removal can be considered as an 'input service' inasmuch as "transportation of final products upto the place of removal" only is inclined in the statutory definition of 'input service' in the Rule 2(1)(ii) of CCR 2004?"

4.The Central Board of Indirect Taxes and Customs had issued circulars from time to time and the latest being the circular, dated 22.08.2019, which fixed the monetary limits for the Department to file appeals against the order of the Tribunal and *per se*, the appeal pending before this Court, subject to the condition, the monetary limit should be above Rs.1 crore. Earlier there was an instruction stipulating the lesser amount, however, the instruction dated 22.08.2019 issued by the Central Board of Indirect Taxes and Customs (CBITC) is not only applicable to the fresh cases but also the pending cases. Thus, applying the said instruction, this appeal is dismissed as withdrawn and the substantial questions of law raises in this appeal are left open. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Customs Excise and Service Tax Appellate Tribunal,
Southern Zonal Bench, Chennai.

2.The Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Thirunelveli-627007.

3.The Commissioner of Central Excise,
Tirunelveli.

+1cc to Mr.R.ARAVINDAN, ADVOCATE, SR.NO.91530

C.M.A.(MD).No.546 of 2012
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KK/SAR/21.11.2019/2P-5C/