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.349 of 2016**

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

Vs.

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.40412/2015 dated 08.04.2015 passed by the Hon'ble Customs, Excise and Service Tax Appellate Tribunal, Chennai in Appeal No.E/00506/2008 arising out of Order-in-original No.07 & 08/COMMR/CE/2008 dated 26.08.2008 passed by the Commissioner of Central Excise, Tirunelveli.

For Appellant : Mr.S.Gurumoorthy
For Respondent : Mr.S.P.Maharajan

**JUDGMENT**

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

Heard Mr.S.Gurumoorthy, learned counsel appearing for the appellant and Mr.S.P.Maharajan, 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.40412/2015 dated 08.04.2015.

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

"(a)*Whether by virtue of Rule 2(1) and 2(m) readwith Rule 7 of Cenvat Credit Rules, 2004, a service not directly or indirectly used by a manufacturer in relation to the manufacture of final products can be* *termed as "input service" and whether tax paid on such service can be taken credit by the manufacturer upon distribution by the Input service distribution?*

*(b)Whether any unit of a manufacturer not registered under Service Tax (Registration of Special Category of Persons) Rules, 2005 is entitled to distribute input service credit to manufacturer?"*

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 )

To

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

2.The Customs, Excise and Service Tax
Appellate Tribunal, Chennai.

3.The Commissioner of Central Excise,
Tirunelveli.

+1 CC to Mr.S.P.MAHARAJAN, Advocate ( SR-91448[F] dated 04/10/2019 )

**C.M.A.(MD).No.349 of 2016**
**04.10.2019**

**NS**
_MK (18.11.2019) 2P 5C