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).Nos.1261 to 1263 of 2015

Commissioner of Central Excise
Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002. ... Appellant/Respondent in all C.M.As

Vs.

1.The Customs Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
No.26, Haddows Road,
Chennai-600 006. ...1st Respondent in all C.M.As

2.Madras Cements Ltd.,
Ramasamy Raja Nagar Post,
Virudhunagar-626 204. ...2nd Respondents/Appellant in C.M.A.(MD).No.1261/2015

3.L.S.Mills Ltd.,
Madurai Road,
Post Box NO.12,
Theni-625 531. ...2nd Respondent/Appellant in C.M.A(MD)No.1262/2015

4.Madras Cements Ltd.,
Ramasamy Raja Nagar Post,
Virudhunagar-626 204 ... 2nd Respondent/Appellant in C.M.A.(MD).No.1263/2015

PRAYER in C.M.A.(MD).No.1261 of 2015: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act 1944, to set aside the Final Order No.40292/2015 related to Appeal No.E/00064/2009 (by the respondent herein) covered by Common Final Order Nos.40281 to 40326/2015 dated 25.02.2015 passed by the CESTAT, Chennai against orders in Appeal No.(OLA)-94/95/08 dated 29.11.2008 of Commissioner of Central Excise (Appeals) Madurai.

PRAYER in C.M.A.(MD).No.1262 of 2015: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act 1944, to set aside the Final Order No.40297/2015 related to Appeal No.E/363/2009 (by the respondent herein) covered by Common Final Orders No.40281 to 40326/2015 dated 25.02.2015 passed by the CESTAT, Chennai, against orders in Appeal No.(OLA)-82/2009 dated 23.03.2009 of Commissioner of Central Excise (Appeals) Madurai.

PRAYER in C.M.A.(MD).No.1263 of 2015: Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act 1944, to set aside the Final Order No.40320/2015 related to Appeal No.E/712/2010 (filed by the respondent herein) covered by Common Final Orders No.40281 to 40326/2015 dated 25.02.2015 passed by the CESTAT, Chennai, against orders in Appeal No.(OLA)-394/2010 dated 30.08.2010 of Commissioner of Central Excise (Appeals) Madurai.

For Appellant : Mr.S.Gurumoorthy
For R1 : Mr.Sathish Sundar

COMMON JUDGMENT

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

Heard Mr.S.Gurumoorthy, learned counsel appearing for the appellant and Mr.Sathish Sundar, learned counsel appearing for the first respondent.

2.These appeals have 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 Nos.40292/2015 dated 29.11.2008, 40297/2015 dated 23.03.2009 and 40320/2015 dated 30.08.2010.

3.These appeals have been admitted on the following substantial questions of law,

> "*(1)Whether the Hon'ble Tribunal, Chennai, was correct in law in holding that the assessee is entitled to avail the CENVAT credit of service tax paid on the services provided in relation to the Windmills installed and situated away from the factory and factory premises, when the electricity generated and supplied to the State grid of Electricity Board and later units of electricity drawn from state grid could not be said to have been used for manufacture of final product of the assessee in the factory?*
>
> *(ii)Whether, in view of the instructions issued by CBEC, New Delhi in Circular F.No.137/10/2006-CX.4 dated 17.03.2006 to the effect that the credit is not admissible on inputs/input services used in installation /maintenance of windmills located away from the factory, the impugned final order passed by the Hon'ble Tribunal is sustainable in law?"*

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 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, these appeals are dismissed as withdrawn and the substantial questions of law raises in these appeals are left open. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Ns

To:

1.The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
No.26, Haddows Road,
Chennai-600 006.

2.The Commissioner of Central Excise (Appeals)
Madurai.

3.The Commissioner of Central Excise
Lal Bahadur Shastri Road,
Bibikulam,
Madurai-625 002.

C.M.A.(MD).Nos.1261 to 1263 of 2015
04.10.2019

VB(22.11.2019) 3P 4C