IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.M.A.No.1778 of 2018

The Commissioner of GST and Central Excise,
Puducherry Commissionerate,
Beach Road,
Puducherry 605 001 ... Appellant

vs.

M/s.Sunbeam Generators Pvt Ltd.,
R.S.No.24/1, 2, 3A-3D & 5,
Canal Road, Koodapakkam,
Puducherry 605 502 ... Respondent

Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, against the Common Final Order No.41051 of 2018 dated 21.03.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant :: Ms.R.Hemalatha,
Senior Standing counsel

For Respondent :: Mr.S.Jai Kumar

JUDGMENT

(Delivered by *Dr.Vineet Kothari, J.*)

This Civil Miscellaneous Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, dated 21.03.2018, by raising the following substantial question of law:

> *"1. Whether the Hon'ble CESTAT was right in setting aside the order in Original No.02/2013(C) dated 31.01.2013 passed by the Adjudicating Authority inasmuch as they have availed ineligible credit on supplementary invoices issued by M/s.Doosan International India Pvt. Ltd., who has been booked offence case for non-payment of SAD Portion on removal of inputs as such by suppression of fact with intent to evade payment of duty?*
>
> *2. Whether the Hon'ble CESTAT is correct in passing an order that is not in consonance/conformity with the provision of Rule 9(b) and 9(5) of Cenvat Credit Rules, 2004?*

2. When the matter is taken up for hearing, the learned Senior Standing Counsel brought to our notice the Instruction issued by the Central Board of Indirect Taxes and Customs dated 22 August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the

Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and, therefore, the Appeal filed by the Revenue is dismissed as withdrawn, keeping open the substantial question of law for determination in appropriate cases. There is no order as to costs.

(V.K.,J.) (M.S.R., J.)
07.10.2020

Internet : Yes/No.
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To

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

DR.VINEET KOTHARI, J.
and

M.S.RAMESH, J.

C.M.A.No.1778 of 2018

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