IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal No.140 of 2016

The Commissioner of Central
Excise & Service Tax,
Chennai Commissionerate - III,
Chennai - 600 034. ...Appellant

Vs

1. M/s.Ultra Tech Cement Ltd.,
Arakkonam Cement Works,
Chitteri Post,
Arakonam - 631 003.

2. Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
1st Floor, Shasthri Bhawan Annexe,
26, Haddows Road,
Chennai - 600 006. ...Respondents

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the impugned order of the CESTAT in Final Order No.40261/2014 dated 10.04.2014.

For Appellant : Mr.A.P.Srinivas

For Respondent: Mr.R.Parthasarathy for R1
R2- Tribunal

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal filed by the appellant under Section 35G of the Central Excise Act, 1944 is directed against the order dated 10.04.2014 made in Final Order No.40261/2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai ('the Tribunal' for brevity).

2. The appellant has raised the following substantial questions of law for consideration:

"1. Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the appellant is eligible to avail Cenvat Credit for service tax paid on freight for outward transportation from the place of removal?

2. Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the services availed by a manufacturer for outward transportation of goods from the place of removal is an Input service in terms of Rule 2(I)(ii) of Cenvat Credit Rules, 2004?

3. Whether on the facts and circumstances of the case, the Tribunal is justified in rendering the final order when there are contradictory judgments of various High Courts and a Special Leave Petition (Civil) 25857 of 2011 before the Hon'ble Supreme Court against the judgment of Hon'ble High Court of Karnataka in the case of CCE, Bangalore Vs ABB Limited is pending before the Hon'ble Supreme Court?

4. Whether on the facts and circumstances of the case, the Hon'ble CESTAT, Chennai was correct in rejecting the appeal of the department when the issue is pending before Hon'ble Supreme Court and had not reached finality?

5. Whether on the facts and circumstances of the case, the Hon'ble CESTAT, Chennai was correct in rejecting the appeal relying on the judgment of various High Courts which are challenged before the Supreme Court?"

3. We have heard Mr.A.P.Srinivas, learned counsel appearing for the appellant and Mr.R.Parthasarathy, learned counsel appearing for the first respondent.

4. The appellant/Department seeks to withdraw the case on account of low tax effect in terms of the circular dated 22.8.2019 issued by the Central Board of Indirect Taxes and Customs. By the said Circular, the monetary limit for filing or pursuing any matter before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5. In the light of the above, the Civil Miscellaneous Appeal is dismissed on the ground of low tax effect and the substantial questions of law raised are left open. In the event

the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to file a petition before this Court to restore the matter to be heard and decided on merits. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Hvk

To

1. Customs, Excise and Service
 Tax Appellate Tribunal,
 South Zonal Bench,
 1st Floor, Shasthri Bhawan Annexe,
 No.26, Haddows Road,
 Chennai - 600 006.

2. The Commissioner of Central
 Excise & Service Tax,
 Chennai Commissionerate - III,
 Chennai - 600 034.

+1cc to Mr.Lakshmi Kumaran, Advocate, S.R.No. 9728
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No. 9881

C.M.A.No.140 of 2016

BS(CO)
GN(18/03/2021)