IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.25621 of 2015 &
M.P.Nos.1 to 4 of 2015

M/s.JSW Steel Limited,
Rep. By its Authorised Signatory,
Mettur Taluk,
Salem - 636 453 .. Petitioner

v.

Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road,
Salem - 636 001. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari calling for the records of the respondent comprised in the Show Cause Notice bearing Ref. C.No.V/72/15/125/2014 C.Ex.Adj. dated 6.5.2014 SCN SI No.28/2014 C.Ex. (Commr) issued by the respondent as well as the consequent Statement of Demand bearing Ref. No.39/2015 C.Ex (Commissioner) dated 1.5.2015 issued in file C.No.V/72/30/78/2015 C.Ex.Adj. and quash the same as arbitrary, illegal, without jurisdiction.

For petitioner : Mr.Satish Parasaran
For respondents : Mr.V.Sundareswaran, Standing Counsel

O R D E R

Heard Mr.Satish Parasaran, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Standing Counsel for the respondent.

2. This writ petition has been filed challenging the impugned Show Cause Notice dated 6.5.2014 issued by the respondent as well as the consequent Statement of Demand dated 1.5.2015 and quash the same as arbitrary, illegal and without jurisdiction.

3.1 The petitioner company is a Public Limited Company and registered as per the Central Excise Act, 1944 and is engaged in the manufacture of iron and steel bars and rods, flats, rounds, coils, billets etc., and claims that it is the only integrated steel plant in the State of Tamil Nadu. The major raw materials of the manufacturing process of the petitioner are iron ore, limestone and coal.

3.2 The case of the petitioner is that the petitioner is one of the leading steel manufacturers in India and has also been honoured with 'Prime Minister's Medal for Excellence' for the year 2012-13. One of the petitioner's manufacturing units is located in Salem, Tamil Nadu, which had undertaken modernization and substantial expansion efforts starting from 2005-06, when the plant was taken over by the petitioner company. Many changes were effected to the plant with respect to capacity, technology, market and many other factors. Through the said measures, the capacity of the steel plant was expanded from 0.3 Million Tonnes per annum to 1 MTPA over the years. The petitioner has also erected and commissioned a second line of steel melting shop, sinter plant, air separation plant, blasts furnace and has also installed a coke oven plant, a captive power plant, blooming mill, wire rod mill etc.

3.3 In these circumstances, on 16.01.2014, a letter was issued by the Superintendent of the respondent department stating that during the course of audit of accounts of the petitioner company, the production capacity had been noticed that the petitioner's factory is producing goods in quantities below the required mark. The said notice also proceeded to require the petitioner to furnish details in respect of the quantity of raw material purchased and used, and goods produced as well as the month-wise electricity consumption particulars.

3.3. In response to the said notice, the petitioner company submitted a reply dated 11.02.2014, furnishing the details of raw materials and electricity consumption sought by the respondent department. Thereafter, no further clarification was sought by the respondent. However, all of a sudden, by way of impugned Show Cause Notice dated 6.5.2014 as well as the consequent Statement of Demand dated 1.5.2015, the respondent directed the petitioner to show cause as to why excise duty to the tune of Rs.753,55,21,165/- should not be levied on it for the period from 2010-11 to 2013-14. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the show cause notice invoking section 11(A) (4) of the Central Excise Act, 1944 and consequential penal action read with Rule 25 of the Central Excise Rules, 2002 was issued to the petitioner. According to the learned counsel for the petitioner, there are not even a single justifiable reason for the purpose of issuing show cause notice, which is untenable, without jurisdiction and contrary to the principles of Excise law. Hence, he sought to quash the same.

5. On instructions, the learned Standing Counsel for the respondent submitted that the show cause notice came to be issued only on the basis of the available materials for which necessarily the petitioner company have to file their objections.

6. According to the learned counsel for the petitioner, mere issuance of show cause notice itself is questioned and under such circumstances, the question of reply does not arise.

7. I have considered the rival submissions and perused the materials.

8. Pointing out certain lapses and contraventions of the provisions of the Act and Rules, related to the actual production of finished goods, the respondent alleged suppression and duty evasion. Since the respondent has taken the ground of suppression, etc., it is appropriate for this court to direct the petitioner to file necessary objections to the show cause notice impugned herein. Hence, the petitioner company is directed to file their objections within a period of two weeks from the date of receipt of a copy of this order and on such filing, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter, after affording an opportunity of personal hearing to the petitioner.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

Rj
To
Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road,
Salem - 636 001.

2 cc to Mr..Satish Parasaran , Advocate Sr.No.45036, 45237
1 cc to Mr. V.Sundareswaran,, Advocate Sr.No. 45243

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