IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7809 of 2015
and
M.P.No.1 of 2015

M/s.India Pistons Limited,
represented by its
Manager-Joint Venture Services,
Mr.S.V.Ramani
Plot 46-49 & 76,
Sipcot Industrial Complex,
Phase II, Hosur,
Tamil Nadu 635 109. Petitioner

vs.

The Superintendent of Central Excise,
DPU, (Divisional Preventive Unit),
Hosur II Division,
SIPCOT, Hosur 635 126. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records comprised in impugned communication in C.No.IV/-06/01/2012-Misc-PG dated 19.1.2015 on the file of the respondent and quash the same.

For Petitioner : Mr.K.Magesh

For Respondents: Mr.T.Chandrasekaran

ORDER

Petitioner has come forward challenging the communication dated 19.1.2015 in C.No.IV/-06/01/2012-Misc-PG on the file of the respondent.

2. According to the petitioner, even without a show cause notice, the respondents have directed them to pay Excise Duty alongwith interest in terms of section 11AA of the Central Excise Act, 1944.

3. The respondent submitted that it is true that no show cause notice was given, but, it is only a communication issued to the petitioner informing lapses. The petitioner will have to pay the

duty apart from interest and penalty if in case they are liable to pay the amount demanded by the respondent. Since it is only at a preliminary stage of adjudication viz., before the issue of show cause notice, the writ petition is premature and it has got to be dismissed, he further submitted.

4. Heard both sides.

5. The contention of the respondent could have been correct provided if there was no demand in the impugned communication dated 19.1.2015. That apart, the respondent has stated that it is only at a preliminary stage of adjudication process and therefore, an opportunity would be given to the petitioner to pay any admitted amount so that the issue could given quietus to.

6. In reply, the petitioner submitted that the communication dated 19.1.2015 cannot be treated as a show cause notice, as it has got to be issued in appropriate forum asking the petitioner to explain and if such notice is issued, the petitioner would file their objections and participate in the enquiry.

7. Taking note of the submissions of both the parties and that the impugned order is only a communication and not a demand to pay the excise duty together with interest as stated by the respondent, it is open to the respondent to issue a fresh notice to the petitioner under the provisions of the Central Excise Act and after receipt of a reply within a stipulated time, affording an opportunity of being heard to the petitioner, it is open to the respondent to pass appropriate orders on merits and in accordance with law.

8. The writ petition is disposed of in the above terms. The narration of the events in this order is only for the disposal of the writ petition and it will not be prejudicial to the rights of both the parties in the writ petition. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Superintendent of Central Excise,
DPU, (Divisional Preventive Unit),
Hosur II Division,
SIPCOT, Hosur 635 126.

+1 cc to Mr.K.magesh, Advocate,SR.17108

+1 cc to Mr.T.Chandrasekaran, Advocate,SR.17119.

ctk(co)
krd 17/4

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