IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2016

C O R A M

THE HON'BLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Civil Miscellaneous Appeal No.2743 of 2016
and
C.M.P.No.19820 of 2016

DRK Engineering,
No.1/69A, North Street,
Poyyur, Melakaruppur Post,
Ariyalur 627 707. ... Appellant

Vs

The Commissioner of Central
Excise and Service Tax,
No.1, Williams Road,
Cantonment, Trichy 620 001. ... Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1994, against the Final Order No.40417 of 2016 dated 4.3.2016 on the file of the CESTAT, Chennai, arising against the Order in Appeal No.117 of 2014, dated 11.09.2014 passed by the Commissioner of Customs & Central Excise (Appeal), Tiruchirapalli, against the Order of the Assistant Commissioner of Central Excise, Central Excise Division, Thanjavur - 613 007 in C.No.V/STC/15/26/2013-ST.ADJ Order No.6/2014-ST dated 25.03.2014 agains the Order of the Assistant Commissioner of Central Excise and Service Tax, Ponnagar, Medical College Road, Thanjavur - 613 007 in C.No. V/STC/15/26/2013-ST.ADJ, SCN.No.19/2013-ST dated 10.10.2013,

For Appellant : Ms.Cynduja Krishnan for
Mr.S.Muthu Venkataraman

For respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

This Appeal is filed by the assessee aggrieved by the order passed by the CESTAT, dated 4.3.2016, whereby the prayer to exonerate it from penalty under section 78 of the Finance Act, 1994 was rejected.

2. The case of the appellant is that tax has been remitted without demur even before issuance of show cause notice. Further, various documents had been produced before the Commissioner (Appeals) to establish the errors that arose in the order of the original authority by way of additional evidence that had not been admitted for consideration. We find that this aspect of the matter has not been considered by the CESTAT, though specifically raised.

3. We are, thus, of the view that the facts and circumstances of the case warrant a remand to the file of the Commissioner (Appeals) for consideration of the matter de novo including the additional evidence produced by the appellant. Accordingly, we set aside the order of the Tribunal as well as that of the Commissioner(Appeals) and remand the matter to the file of the Commissioner (Appeals) for fresh consideration on merits, after affording an opportunity of hearing to the appellant herein. The civil miscellaneous appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssk

To

1.The Commissioner of Central
Excise and Service Tax,
No.1, Williams Road,
Cantonment, Trichy 620 001.

2.The Commissioner of Customs &
Central Excise (Appeal),
Tiruchirapalli.

3.The Assistant Commissioner of Central
Excise Division,
Thanjavur 613 007.

4.The Assistant Commissioner of Central
Excise and Service Tax,
Ponnagar, Medical College Road,
Thanjavur - 613 007.

+1cc to Mr.S.Muthu Venkataraman, Advocate, S.R.No.76020
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.76236

C.M.A.No.2743 of 2016

LRS(CO)
CA(12/04/2017)