

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.4934 of 2014 &
MP Nos.1 & 2 of 2014

M/S.CHEMCROWN EXPORTS LIMITED (UNIT III)
19/1 AND 4/4 MYLAM- PONDICHERRY ROAD
SEDARPET, PUDUCHERRY ROAD 605 009. [PETITIONER]

Vs

- 1 THE COMMISSIONER OF CENTRAL EXCISE (APPEALS)
NO.26/1 MAHATMA GANDHI MARG
NUNGAMBAKKAM, CHENNAI 34.
- 2 THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE
NO.1 GOUBERT AVENUE , BEACH ROAD
PUDUCHERRY 605 001

[RESPONDENTS]

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified mandamus to call for the records pertaining to the impugned interim order No.14/2014 (P) dt 31.1.2014 in Appeal No. 107/2013 (P) dt 28.8.2013 passed by the 1st respondent and quash the same and further direct the 1st respondent to hear the appeal No.107/2013 (P) dt 28.8.2013 filed by the petitioner without insisting on pre-deposit of duty interest and penalty.

For Petitioner : Mr.G.Derrick Sam

For Respondents: Mrs.Hema Muralikrishnan
Senior Panel Counsel

O R D E R

Heard Mr.G.Derrick Sam, learned counsel for the petitioner, and Mrs.Hema Muralikrishnan, learned Senior Panel Counsel for the respondents.

2.The petitioner has come forward with this Writ Petition, challenging the order passed by the first respondent under the provisions of the Central Excise Act.

3.The petitioner filed an Appeal as against the order passed by the Additional Commissioner of Central Excise, Puducherry in Order-in-Original No.3 of 2013 dated 31.01.2013. By the said order, the amount of Rs.19,59,871/- was directed to be recovered being the CENVAT credit, wrongly availed by the petitioner. Apart from that there was also an order to recover interest and penalty equivalent to the amount to be recovered.

4.The petitioner sought for unconditional stay of the order before the Commissioner of Central Excise (Appeals) and filed an Application for waiver. In the said Application, apart from pointing out the merits of the Appeal to show that the petitioner has made out a prima facie case, with regard to the financial condition of the petitioner-Company, it was stated that because of a fire accident in December, 2010, they are suffering severe financial crises. The Commissioner of Central Excise (Appeals), by the impugned order directed the petitioner to pre-deposit a sum of Rs.9,80,000/- being 50% of the CENVAT credit, which was alleged to have been wrongly availed. Challenging the same, the petitioner is before this Court.

5.Considering the facts and circumstances of the case and the grounds raised before the Commissioner of Central Excise (Appeals) and taking note of the fact that the petitioner's factory was destroyed by fire, which was also reported in the Tamil Dailys dated 09.12.2010 and also taking note of the fact that the Writ Petition is pending before this Court from 2014, and there is an order of stay, ends of justice would be met if the amount directed to be remitted towards pre-deposit, is reduced.

6.Thus, taking note of the prima facie case made out by the petitioner and also the financial position of the petitioner, the petitioner to directed to deposit a sum of Rs.2,50,000/-, within a period of eight weeks from the date of receipt of a copy of this order. If this condition is complied with, then the Commissioner of Central Excise (Appeals), may proceed with the Appeal on merits.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpa

To

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NO.1 GOUBERT AVENUE , BEACH ROAD
PUDUCHERRY 605 001.

+1cc to Mr.Hari Radhakrishnan, Advocate Sr.68995

+1cc to Mr.Hema Murali Krishnan, Advocate Sr.68675

W.P.No. 4934 of 2014

mg[co]
srg 20/12/2016

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