IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9226 to 9233 of 2015
&
M.P.Nos.1 to 1 of 2015

W.P.No.9226 of 2015

M/s.Vignesh Alloys Private Limited
Represented by its Director Mr.R.Mathivanan
A-15, Private Industrial Estate
Coimbatore - 641 021 ... Petitioner

S.K.Rangaswamy ...Petitioner in WP.9227/15
Mrs.Jayabharathi ...Petitioner in WP.9228/15
Mr.Jeyaprakash ...Petitioner in WP.9229/15
Mr.Nagendran ...Petitioner in WP.9230/15
Mr.Chandrasekhar ...Petitioner in WP.9231/15
Mr.R.Vijayakumar ...Petitioner in WP.9232/15
Mr.R.Mathivanan ...Petitioner in WP.9233/15

vs.

Commissioner of Central Excise
Office of the Commissioner of Customs,
Central Excise and Service Tax
6.7 ATD Street, Race Course
Coimbatore - 641 018 ... Respondent in all the WPs

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the order passed by the respondent dated 26.12.2014 in C.No.V/76/15/17/2014-Cx.Adj OIO SI.No.15/2014 (Commr.) for the period 2009-10 to 2010-11 and quash the same.

For Petitioner : Mr.P.I.Rishikesh

For Respondent : Mr.A.P.Srinivas

C O M M O N O R D E R

Heard Mr.P.I.Rishikesh, learned counsel for the petitioners and Mr.A.P.Srinivas, learned counsel for the respondent.

2. The petitioners have filed these writ petitions challenging the order passed by the Commissioner of Central Excise dated 26.12.2014 by which the proposal made in the show-cause notice dated 06.06.2014 has been confirmed and the petitioners have been directed to pay excise duty and penalty. This Court raised a preliminary issue as to how the writ petitions were maintainable when the petitioners have effective alternative remedy of appeal. Learned counsel for the petitioners submitted that show-cause notice dated 06.06.2014 stated that there is an enclosure containing three annexures, Annexure I, Annexure II and Annexure III, but only Annexure I was served on the petitioners. Learned counsel also referred to representation dated 16.12.2014 sent by the petitioners to the respondent stating the action of Canara Bank under the SARFAESI Act and they were unable to enter into the factory to verify the records and the copies of the relied on records were not supplied to them. Therefore, it was submitted that one more opportunity may be afforded to the petitioners.

3. In my view, this issue can be canvassed before the Tribunal itself and the Tribunal can always re-appreciate the facts. That apart, it is seen that in the proceedings before the Commissioner, the petitioners were represented by a counsel as well as by a Consultant. Therefore, the petitioners have to necessarily exhaust the appellate remedy available under the Act and the reason assigned by the petitioners to bypass the remedy is not justified.

Accordingly, the writ petitions are held to be not maintainable and the same are dismissed for such reason alone. However, it is open to the petitioners to file an appeal before the CESTAT and if such an appeal is filed, the CESTAT while computing limitation shall exclude the period spent before this Court in these writ petitions i.e, 26.03.2016, the date of filing of the writ petitions till the certified copy of this order is received by the petitioners. Consequently, the connected miscellaneous petitions are closed. No costs

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gpa

To

1.The Commissioner of Central Excise
O/o.The Commissioner of Customs
Central Excise and Service tax,
6.7 ATD Street Race Course
Coimbatore-641 018

+3 ccs to M/s.P.I.Rishikesh Advocate sr.30411

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