IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.40100 of 2016 &
W.M.P.No.34148 of 2016

Bonfiglioli Transmissions Private Limited,
Represented by its Head Commercial Mr.T.K.Ravi,
Plot No.AC7-AC 11, Sidco Industrial Estate,
Chennai-600 044. .. Petitioner

Versus

The Additional Commissioner of Central Excise,
Chennai-IV Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai-600 035. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of Order in Original No.22-23 of 2016, dated 18.07.2016 in C.No.V/15/84-85/78/2015 - CX. Adj.IV and C.No.V / 15 / 84 & 85 / 03 / 2016 - CX. Adj. IV issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel

O R D E R

Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel appearing for the respondent.

2. The petitioner has filed this Writ Petition challenging the Order-in-Original, dated 18.07.2016, in and by which, the proposal made in the show-cause notice, dated 15.05.2015 was confirmed and the respondent directed recovery of Central Excise Duty of Rs.15,42,790/- under Section 11(A)(i) of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') and also ordered for recovery of interest under Section 11 AA of the Act and imposed penalty of Rs.2,50,000/-. In respect of another show-cause notice, the demand of Central Excise Duty of Rs.6,91,230/- along with interest and penalty of Rs.70,000/- were confirmed-.

3. The learned counsel for the petitioner has challenged the impugned order on the ground that the respondent has passed the impugned order without taking note of the Circular issued by the Commissioner, dated 11.02.2010. Apart from that, the respondent also did not take into consideration the Notification No.25/2016, dated 14.06.2016, whereby, the earlier Notification No.67/95, dated 16.03.1995 was amended by substituting the words "Free Trade Zone" into "Special Economic Zone". Therefore, it is submitted that the impugned order is liable to be set-aside.

4. The learned Senior Panel Counsel appearing for the respondent based on the written instructions given by the Deputy Commissioner (Legal), vide letter dated 16.11.2016, stressed upon the fact that as against the impugned order, there is an alternative remedy of appeal available to the petitioner and without exhausting such remedy, the petitioner should not be permitted to approach this Court.

5. After hearing the learned counsel for the parties and perusing the materials available on record, it is seen that though the respondent has extracted the objections given by the petitioner in the impugned order, wherein, the petitioner has referred to the notification as well as the Circular of the Commissioner. However, there is no reference to the same and the impugned order has been passed totally on a different ground and by observing that the clearances to Special Economic Zone are not mentioned in the ExCus Notification No.25/2016, dated 14.06.2016. However, what the respondent should have seen is, as to the effect of the notification dated 14.06.2016, apart from the circular, dated 11.02.2010, wherein, it has been stated that though the SEZ are not listed in the proviso (i) to (vi) of Notification No.67/95 as per CBEC Circular 29/06, dated 27.12.2006, supplies from DTA to SEZ are exempted from excise duty under Rule 19 and such supplies shall also be eligible for rebate under Rule 19. Therefore, it is stated that clearances to SEZ are to be treated as exports and whether the unit clears the goods under Rule 18 or 19, no duty accrues to the Government. Thus, the respondent having not taken into consideration the submissions made by the petitioner which are very relevant to the facts of the case, this Court is justified in interfering with the impugned order. Apart from that it was pointed out that in respect of an identical issue in the assesse's own case, the CESTAT had granted an order of stay, dated 25.07.2012.

6. In the light of the above, the impugned order calls for interference with a further direction to redo the entire matter, after taking into consideration the contentions raised by the petitioner, some of which, have been noted above.

7. In view of the above, the Writ Petition is allowed, the impugned order is set-aside and the matter is remanded to the respondent for fresh consideration, who shall take note of the observations made by this Court and after affording an opportunity of personal hearing to the petitioner, pass a fresh order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

r n s

Sd/-
Assistant Registrar (CO)

/TRUE COPY/

Sub-Assistant Registrar

To

The Additional Commissioner of Central Excise,
Chennai-IV Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai-600 035.

COPY TO,

THE SECTION OFFICER,
WRIT SECTION,
HIGH COURT, MADRAS-104

+1CC to MR.A.P.SRINIVAS Advocate SR.NO.71477
+1CC to MR.JOSEPH PRABAKAR Advocate SR.NO.71011

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RJ[CO]
MK:02/01/2017