THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.32249 of 2016

Between:

M/s. Hi – Power Electrical Industries, Unit –I,
D-4, 4/1, Phase-V, IDA, Patancheru,
Medak District, Telangana – 502319
Rep. by its Authorised Signatory,
Bandaru Venkata Nagaraju

PETITIONER

And

1. Union of India, rep. by its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001 and others.

RESPONSENTS

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.32249 of 2016

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Assessee under the Central Excise Act, 1944 has come up with the present writ petition challenging an Order-in-Original passed by the Additional Commissioner, holding that freight and insurance amount pertaining to the goods cleared by the Assessee should be included in the assessable value of the goods and that the petitioner was liable to pay excess duty together with interest and penalty.

2. Heard Mr. K. Vijay Kumar, learned counsel for the petitioner and Ms. Sundari R. Pisupati, learned Senior Standing Counsel appearing for respondents 2 to 4.

3. Under normal circumstances, the assessee is obliged only to go before the Appellate Authority under Section 35(1) of the Central Excise Act, 1944. The order under challenge is an order against which a statutory appeal is available. Therefore, generally we would have refrain from entertaining the writ petition on the ground of availability of statutory alternative remedy.

4. But the case on hand stands on a unique footing. This is a case where the petitioner has paid an amount of Rs.10,82,682/- as against a duty demand of Rs.11,94,200/-. In other words the petitioner has not come to this Court bypassing the alternative remedy of appeal, for the purpose of avoiding the pre-deposit condition.

5. More over, the grievance of the petitioner is something peculiar. His grievance is that under explanation to Section 4 (1) of the Act, the price-cum-duty for excisable goods sold by the assessee should

be determined in a particular manner. Explanation to Section 4(1) reads as follows:

> "Explanation,– For the removal of doubts, it is hereby declared that the price-cum—duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods."

6. In response to the show cause notice, the petitioner appears to have made a specific request with respect to this aspect. That the petitioner made such a request is born out even from the Order-in-Original, which is impugned in the present writ petition. In paragraph XV of the Order-in-Original the adjudicating authority herself has recorded the following:

> "Even assuming that duty is liable to be paid on the transportation charges, they are eligible for cum-tax benefit as they had not collected the duty from the buyers on the freight charges. In view of the above, they requested to drop further proceedings and an opportunity of personal hearing."

7. But unfortunately, there has been no discussion nor any finding recorded. Since the requirement under Explanation to Section 4(1) is statutory, the adjudicating authority appears to have failed to comply with this requirement, forcing us to interfere with the Order-in-Original.

8. It is contended by Ms. Sundari R. Pisupati, learned Senior Standing Counsel for the respondent that the adjudicating authority has no power of review. The learned Senior Standing Counsel relies upon a circular issued by the Government of India, Ministry of Finance, dated 16.12.1999.

9. Though it is true that the adjudicating authority may not have a power of review as available to Civil Courts, the fact remains that

the petitioner is not aggrieved by the mere absence of a power of review. The petitioner is aggrieved by the failure of the adjudicating authority to consider his objections to the show cause notice and to record a finding. Therefore, we need not go into the question as to whether the matter should have been reviewed or not.

10. In the light of the above, the writ petition is allowed, the impugned order of the Additional Commissioner is set aside, directing the 4th respondent to consider only the aspect relating to Explanation under Section 4(1) of the Central Excise Act, 1944 and to pass a fresh order after giving an opportunity of hearing as well as an opportunity to produce documentary evidence to the petitioner. But the amount already deposited by the petitioner shall not be claimed by way of refund till the fresh order is passed by the 4th respondent.

11. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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JUSTICE V. RAMASUBRAMANIAN

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JUSTICE G. SHYAM PRASAD

9th November, 2016
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.32249 of 2016

Date: 09-11-2016

Js.