IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.33758 of 2017
and
W.M.P.Nos.37399 & 37400 of 2017

M/s.Sri Krishna Smelters (P) Ltd.,
rep. By its Managing Director,
S.F.No.110-1-E, Iveli Village,
Akkampet P.O.,
Sankari Durg - 637 301,
Salem District. ... Petitioner

Vs.

The Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
No.1, Foulks Compound, Anai Medu,
Salem. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in his proceedings in C.No.V/72/15/68/2011-C. Ex.Adj., quash the Order in Original dated 10.01.2014 made therein.

For Petitioner : Mr.R.L.Ramani
Senior Counsel

For Mr.B.Raveendran

For Respondent : Mr.S.Rajasekar

Senior Panel Counsel

ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Rajasekar, learned Senior Standing Counsel accepts notice on behalf of the respondent. With the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner in this writ petition is a Private Limited Company engaged in the manufacture of M.S. Ingots falling under

Chapter Heading 7206 1090 of the Schedule to the Central Excise Tariff Act, 1985. A show cause notice was issued to the petitioner by the respondent dated 05.09.2011 invoking the extended period of five years under Section 11(4) of the Central Excise Act, directing the petitioner to show cause as to why central excise duty should not be recovered from the petitioner along with appropriate interest and penalty.

3.The learned Senior Counsel for the petitioner would submit that the reason for issuance of the show cause notice itself was based upon a report submitted by an Expert that the electricity consumption charges could be reckoned for the purpose of ascertaining the production out put. The petitioner resisted the proposal in the show cause notice by filing their objections on 06.09.2013. The objections were found to be not acceptable and the Commissioner rejected the same and passed Order-in-Original dated 10.01.2014, which order is impugned in this writ petition.

4.Mr.S.Rajasekar, learned Senior Standing Counsel for the Revenue stoutly opposed the prayer sought for in the writ petition and submitted that the writ petition is not maintainable and no indulgence should be granted to the petitioner as they have defaulted in complying with the order passed by the CESTAT and having failed up to the Hon'ble Supreme Court, it is a fit case where the writ petition should be dismissed by the exemplary costs.

5.Prior to the present round of litigation, the petitioner preferred an appeal to the CESTAT against the very same impugned order and filed an application for waiver of pre-deposit. The Tribunal considered the submissions and directed pre-deposit of Rs.1 Crore 50 lakhs as against the demand of more than 15 Crores. The Tribunal also fixed the time frame within which the condition should be complied with and granted indulgence of payment of the amount in two installments of Rs.75 lakhs each. In the meantime, since the petitioner did not comply with the condition, the appeal stood dismissed. This was challenged by the petitioner, by filing W.P.No.32963 of 2007. Against the miscellaneous order i.e., the order in the application for waiver of pre-deposit, the petitioner preferred Civil Miscellaneous Appeal No.2214 of 2015. Both these matter were heard together before the Hon'ble Division Bench and by order/ judgment dated 29.10.2015, the writ petition and the civil miscellaneous appeal were dismissed. The petitioner did not stop with this, but approached the Hon'ble Supreme Court and once again faced defeat as the Special Leave Petition was dismissed by the Hon'ble Supreme Court, by order dated 07.10.2016. After all these, the petitioner is now before this Court challenging the Order-in-Original.

6.The question would be whether this Court should permit the petitioner to now challenge the Order-in-Original dated 10.01.2014 when the appeal filed against the said order stood dismissed though on a technical ground. However, it appears due to the impugned proceedings under the Central Excise Act, the petitioner is now faced with proceedings under the Income Tax Act and the Tamil Nadu Value Added Tax Act and the matters are pending at various stages. Apart from that though the Order-in-Original was passed in the year 2014, the Central Excise Department has not been able to recover a portion of the amount pending disposal of the appeal and the Department have been drawn into the litigation ever since 2014 onwards. Therefore, with a view to protect the interest of Revenue and also to give an opportunity to the assessee to remedy the breach, this Court is inclined to issue appropriate directions. It is made clear that this Court is not inclined to interfere with the Order-in-Original dated 10.01.2014 impugned in this writ petition. To be noted that the appeal filed by the petitioner before the Tribunal was dismissed on a technical ground i.e. non-compliance of the order of pre-deposit within the time permitted. On facts, it appears to be a reasonable case where one opportunity can be granted to the petitioner to test their bona fides.

7.Accordingly, while rejecting the challenge to the impugned order, direction is issued to the petitioner to pay a sum of Rs.75 lakhs on or before 16.02.2018. This being part of the amount of pre-deposit directed by the CESTAT. If the petitioner complies with the said condition, liberty is granted to the petitioner to file appropriate miscellaneous applications before the Tribunal for waiver and/or for appropriate orders. If the petitioner fails to comply with the above condition, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed.

8.With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
No.1, Foulks Compound, Anai Medu,
Salem.

+1cc to Mr.B.RAVEENDRAN, Advocate, S.R.No. 92438
+1cc to Mr.S.RAJASEKAR Advocate, S.R.No. 92339

W.P.No.33758 of 2017

KAN(CO)
TR(19/01/2018)