IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA No.967 of 2007

The Commissioner of Customs
and Central Excise
6/7, ATD Street,
Race Course Road,
Coimbatore - 641 018 ...Appellant

vs.

1. M/s.Kannapiran Steel Re-rolling Mills,
334/1A, Mettupalayam Road,
Coimbatore.

2. The Customs Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan,
Haddows Road, Chennai - 600 006. ... Respondents

Civil Miscellaneous Appeal filed under Section 35G(2) of the Central Excise Act, 1944) praying to set aside the impugned Final Order No.246-249/2006 dated 03.04.2006 passed by the Hon'ble CESTAT, Chennai and to restore the Orders-in-Original Nos.8/2004, 17/2004, 18/2004 and 19/2004 dated 31.03.2004, passed by the Deputy Commissioner of Central Excise.

For Appellant : Mr.K.S.Ramasamy

For Respondent : Mr.Rajasekar
CGSC

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J)

Civil Miscellaneous Appeal is filed against the Final Order No.246 of 2006 dated 03.04.2006 on the file of the CESTAT, Chennai, on the following substantial questions of law.

"(a) Whether the Tribunal is right in exercising the non-existent element of discretion under Rule 96 ZP (3) of the erstwhile Central Excise Rules, 1944 to reduce the quantum of penalties that was rightly imposed by the adjudicating authority and upheld by the lower appellate forum after due process of law and based on the findings that the respondents had defaulted in payment of duty?

(b) Whether the Hon'ble Tribunal was right in placing reliance upon its own decision in the case of M/s.Sree Lakshmi Steel Re-rolling Mills without any reference to the decision of a Division Bench of Hon'ble High Court of Allahabad in the case of Pee Aar Steels Pvt. Ltd., which was prominently quoted by the Commissioner (Appeals) to uphold the penalty imposed by the adjudicating authority?"

2. Issue involved in the Civil Miscellaneous Appeal, is covered by the decision of this Court in Commissioner of Central Excise, Chennai-II Vs. Arun Vyapar Udyog Limited, reported in 2017 (345) ELT 331 Madras, wherein a Hon'ble Division Bench of this Court, to which one of us is a party [Hon'ble Mr. Justice S.Manikumar], held as follows:

"10. Two issues are involved in the present appeals. One relates to penalty. The Tribunal, while directing the Commissioner to fix the ACP, has set aside the penalty also. Penalty, as such, cannot be imposed, in the light of the decision of the Hon''ble Supreme Court in Shree Bhagwati Steel Rolling Mills V. Commissioner of Central Excise reported in 2015(326) ELT 209 (SC), wherein, the issue, which came up for consideration before the Hon'ble Supreme Court, was to the correctness of the judgments of High Courts, which struck down Rules 96ZO, 96ZP and 96Zq of the Central Excise Rules, 1944, relating to penalty, as ultra vires of a parent Act and violative of Articles 14 and 19 (1)(g) of the Constitution of India. Insofar as penalty is concerned, the Hon'ble Apex Court held that it is ultra vires. In other respects, the Apex Court upheld the scheme. In the light of the above reported decision, the case of the revenue, regarding penalty, has to fail.

11. Insofar as the contentions raised in CMA No.2856 of 2005, perusal of the common order of the Tribunal shows that all the contentions raised have been dealt with in details, and answered accordingly. We do not find that the orders impugned before us, require any interference. All the substantial questions of law raised in the appeals are answered against the revenue."

3. Going through the judgment stated Mr.Rajasekar, learned Central Government Standing Counsel for the appellant also submitted that Hon'ble Supreme Court has set aside the penalty, and that the judgment in Arun Vyapar's case, applies to the case on hand also.

4. In the light of the above decision and placing on record the submission of the learned Central Government Standing Counsel appearing for the appellant, substantial

questions of law raised are answered in the negative, as against the revenue. The Civil Miscellaneous Appeal is dismissed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan,
Haddows Road, Chennai - 600 006.

2. The Deputy Commissioner of Central Excise,
Commissioner 1 Division, 1237,
ELC Building Trichy Road, Coimbatore -18.

+ 1 cc to M/s. K.S. Ramaswamy, Advocate SR.54197

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SAI(CO)
EU 22.08.17