IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31200 of 2003

M/S STROMTEK AUTOMATION PVT. LTD.
CHENNAI 32. ... Petitioner

Vs

1. ADDL. COMMR. OF CENTRAL EXCISE
CHENNAI IV COMMISSIONERATE
M.H.U COMPLEX 692 ANNA SALAI
NANDANAM CHENNAI 35.

2. THE CENTRAL BOARD OF EXCISE & CUSTOMS
NORTH BLOCK
NEW DELHI 110 001

3. THE UNION OF INDIA
REP. BY THE SECY. MINISTRY OF FINANCE
DEPT. OF REVENUE NORTH BLOCK
NEW DELHI 110 001. ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records in order in 41/2003 in C.No.V/15/85/60/ 2003-CS-ADJIV dated 31.08.2003 of the 1st respondent.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.A.P.Srinivas,
Senior Central Government
Standing Counsel

O R D E R

Heard Thiru.M.P.Senthil Kumar, learned counsel for the petitioner and Thiru.A.P.Srinivas, Senior Central Government Standing Counsel, for the respondents.

2. The petitioner has filed this Writ Petition challenging the order passed by the respondent dated 31.08.2003 by which, the respondent confirmed the payment of duty of Rs.13,84,945/- under the provisions to Sub section 1 Section 11(A) of the Central Excise Act, 1944, apart from imposing the penalty under Section 11AC of the Central Excise Act, 1944 and Rule 173Q(1) of the Central Excise Rules, 1944.

3. The petitioner has raised two grounds for challenging the impugned order. Firstly, the ground of gross violation of

principles of natural justice and secondly, the ground of lack of jurisdiction. The learned counsel for the petitioner would point out that the petitioner had appeared on 8.9.2003 for personal hearing and submitted his written submissions. Therefore, the respondent could not have passed the impugned order on 31.8.2003. The second aspect is with regard to jurisdiction. It is submitted that after 01.10.2003, the jurisdiction of the Assessing Officer had been transferred to the Joint Commissioner and therefore, the respondent had no jurisdiction to pass the impugned order.

4. On the first contention, this Court has carefully perused the impugned order. In paragraph 9, it is seen that the respondent has recorded as if the petitioner had failed to appear for the personal hearing on 18.9.2003 and therefore, the authority was constrained to decide the case based on the written submissions. The case of the petitioner is that he appeared before the authority in August 2003 and submitted written submissions and the personal hearing was adjourned to September 2003 and even assuming that the personal hearing was held on 18.09.2003, the impugned order could not have been passed on 31.08.2003. There is no explanation for this gross error committed by the authority, as no counter affidavit has been filed by the respondent. This Court is satisfied that the impugned order has been passed in violation of principles of natural justice. Since this Court is convinced that the impugned order is to be set aside on the above ground, the other issue regarding jurisdiction is left open. Accordingly, the Writ Petition is allowed and the impugned order is left open. The matter is remanded back to the authority concerned to take a fresh decision in the matter, after affording reasonable opportunity to the petitioner. No costs. Consequently, W.P.M.P.No.37984 of 2003 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.THE ADDL. COMMR. OF CENTRAL EXCISE
CHENNAI IV COMMISSIONERATE
M.H.U COMPLEX
692 ANNA SALAI
NANDANAM CHENNAI 35.

2.THE CENTRAL BOARD OF EXCISE & CUSTOMS
NORTH BLOCK
NEW DELHI 110 001

3.THE MINISTRY OF FINANCE
DEPT. OF REVENUE
NORTH BLOCK
NEW DELHI 110 001.

+1cc to M/s.Mallika Srinivasan, Advocate, S.R.No.47955
+1cc to Mr.A.P.Srinivas, Senior Standing Counsel, S.R.No.48382

W.P.No.31200 of 2003

CS V
CA(08/08/2017)