IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.02.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

Writ Petition No.15901 of 2007

M/s.Kanishk Steel Industries Limited,
(Formerly known as
M/s.O.P. Steels Limited)
B-27 (N), SIPCOT Industrial Estate,
Gummidipoondi,
Tamilnadu 601 201.
represented by its Director Ashok Bohra
... Petitioner

Versus

1. The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench, I Floor,
Shastri Bhavan Annexe, Haddows Road,
Chennai 600 006.
2. Commissioner of Central Excise,
Chennai II Commissionerate,
692, Anna Salai, Nandanam,
Chennai 600 035. .. Respondent

Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to Final order No.22/2007 dated 8.1.07/Misc.Order No.13/2007 dated 8.1.07 of the first respondent and quash the same and consequently direct the first respondent to hear the main appeal on merits without insisting on pre-deposit of duty and penalty .

For Petitioner .. Mr.J. Shankarraman

For Respondent .. Mr.A.P.Srinivas
Standing Counsel for Dept.

ORDER

(Order of the Court was made by Huluvadi G.Ramesh,J.)

This Writ Petition is filed to quash the impugned order passed by the first respondent in Final order No.22/2007 dated 8.1.07/Misc.Order No.13/2007 dated 8.1.07 and consequently direct the first respondent to hear the main appeal on merits without insisting on pre-deposit of duty and penalty .

2. The petitioner is engaged in the manufacture of MS Ingots falling under Chapter sub-heading 7206.90 of Central Excise Tariff Act 1985. During the period from 1.9.97 to 31.3.2000, the petitioner was operating under compounded levy scheme and paying the amount as per Section 3A of Central Excise Act 1944 read with Induction Furnace Annual Capacity Determination Rules, 1997 and sub Rule (3) of Rule 96 ZO of Central Excise Rules, 1944. Show Cause notices have been issued regularly from September 1997 to August 1999 demanding differential duty along with penalty and interest. The petitioner preferred three appeals against the orders dated 22.6.99, 30.6.2000 and 18.4.2001 passed by the second respondent before the CESTAT/1st respondent, who, on hearing the appeals remanded the case for denovo consideration.

3. The second respondent passed Order-in-Original No.8/2006 dated 24.5.2005 demanding a sum of Rs.35,66,107/- towards differential duty and imposed penalty of Rs.35,66,107/- and also ordered recovery of interest at the rate of 18% provided under Rule 96ZO(3) of Central Excise Rules, 1944. The petitioner filed appeal against the above order before the first respondent along with stay application praying for waiver of pre-deposit of duty and penalty. The first respondent, after hearing the submissions made on both sides, passed an order in stay order No.1076 of 2006 on 2.11.2006 directing the petitioner to pre deposit Rs.25 lakhs under Section 35F of the Central Excise Act within six weeks and to report compliance on 19.12.2006.

4. The petitioner challenged the above said order by filing a Writ Petition No.48240 of 2006 before this Court and the said Writ Petition was admitted and notice was ordered and the Writ Petition was posted for hearing on 2.1.2007 and the same was taken up for hearing on 3.1.2007 as the petitioner was supposed to report compliance before the first respondent on 4.1.2007. Since the High Court did not order anything, the petitioner filed a letter dated 3.1.2007 before the first respondent . The counsel on record also sought for time on the ground that he was ill. The first respondent dismissed the appeal vide Final Order

No.22 of 2007 dated 8.1.2007 on the ground that a medical certificate was not produced in proof of the counsel's illness and documentary evidence was not produced with regard to the fact that the High Court Registry did not list the W.P. on 2.1.2007. Hence the petitioner has come forward with the present Writ Petition praying to quash the impugned order and consequently direct the first respondent to hear the main appeal on merits without insisting on pre-deposit of duty and penalty.

5. From a perusal of the impugned order, it is seen that for non compliance of the order passed by the 1st respondent, the appeals preferred by the petitioner before the 1st respondent was dismissed for default. Against which, the present writ petition is filed praying to quash the same and to further direct the 1st respondent to hear the main appeals on merits without insisting on pre-deposit of duty and penalty .

6. In the meanwhile, learned counsel for the petitioner submitted before this court that the pre-deposit amount of Rs.25 lakhs ordered to be deposited by the 1st respondent had been deposited. In the circumstances, the impugned order passed by the 1st respondent dismissing the appeal for non compliance is hereby is set aside and the same is remanded back to the 1st respondent/tribunal for consideration afresh. The 1st respondent shall dispose of the appeal in accordance with law and on merits within a period of three months from the date of receipt of a copy of this order. The Writ Petition is disposed of with the above direction. No costs. Consequntly, connected M.P.No.1 of 2007 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Central Excise,
Chennai II Commissionerate,
692, Anna Salai, Nandanam,
Chennai 600 035.

+1cc to Mr.A.P.Srinivas, Advocate Sr.9416
+1cc to Mr.S.Venkatachalam, Advocate Sr.9112

Writ Petition No.15901 of 2007

rj[co]
srg 14/03/2017