IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2017

Coram

The Hon'ble Mr.Justice T.S.SIVAGNANAM

Writ Petition No.36877 of 2004
and
W.P.M.P.Nos.44254 and 45669 of 2004

M/s. Sri Vigneswara Steels Ltd.,
S.F.No.110/1-A/1.
Mavelipalayam Privu Road,
Akkamapettai Post,
Sankari. ...Petitioner

Vs.

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem - 636 001. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, forbearing the respondent from finalizing the assessment, without first determining the capacity of productions of the petitioner, as claimed under proviso to Rule 96 Z0 (3) of the Central Excise Rules, as directed by the Hon'ble Supreme Court, in Civil Appeal No.7086 -7089/2000, dated 12.02.2001.

For Petitioner : Mr.M.A.Mudimannan
for M/s.K.Jayachandran

For Respondent : Mr.K.Magesh
Senior Standing Counsel

O R D E R

Heard Mr.M.A.Mudimannan, the learned counsel, representing M/s.K.Jayachandran, the learned counsel for the petitioner, and Mr.K.Magesh, learned Senior Standing Counsel for the respondent.

2. The petitioner seeks for a direction upon the respondent, to forbear the respondent from finalizing the assessment, without first determining the capacity of production of the petitioner, as provided under Rule 96 Z0 (3) of the Central Excise Rules, in terms of the direction issued by the

Hon'ble Supreme Court, in Civil Appeal Nos.7086 -7089/2000, dated 12.02.2001.

3. When the show cause notice was issued to the petitioner, the petitioner moved this Court, stating that, without determining the production capacity of the petitioner, personal hearing has been fixed. The Court, while admitting the Writ Petition, has granted an order of interim stay of personal hearing alone. It appears that, no further steps were taken by the Department, since the Writ Petition was pending.

4. The learned Senior Standing Counsel for the respondent, on instructions, would submit that, following the decision of the Hon'ble Supreme Court, (cited above), the respondent would determine the annual production of the petitioner, and then, would proceed to adjudicate the matter, by issuing show cause notice.

5. In the light of the above submission, the Writ Petition is disposed of, by directing the respondent to determine the annual production of the petitioner, in terms of the directives issued by the Hon'ble Supreme Court, in the above referred case, intimating the petitioner about the same and thereafter, proceed to adjudicate the matter by issuing fresh show cause notice in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sd

To

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem - 636 001.

+ 1 cc to M/s.K.Jajachandran, Advocate,SR.51105

+ 1 cc to M/s.K.Magesh, Advocate,SR.50485

Writ Petition No.36877 of 2004

RR(CO)
NR (10/08/2017)