IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2017

Coram

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

Writ Petition No.28232 of 2004
and
W.P.M.P.No.34284 of 2004

M/s.Umashankar Alloys Private Limited,
Rep., by its Director,
D.Murthy,
Plot No.39 SIPCOT Phase-II,
Hosur - 635 109. ...Petitioner

Vs.

The Assistant Commissioner of Central Excise,
Division-I,
Thally Road, Hosur - 635 109. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records relating to the order No.21/2003 dated 28.03.2003 passed by the respondent and quash the same.

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

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard Mr.M.A.Mudimannan, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2. The petitioner is aggrieved by the order passed by the respondent/Assistant Commissioner of Central Excise, dated 28.03.2003, by which, the petitioner has been called upon to pay the outstanding amount of duty as well as penalty and interest.

3. The ground, on which, the impugned order has been challenged is by contending that the respondent has no jurisdiction to demand duty amount of Rs.90,00,000/-. With regard to levy of penalty and interest, the learned counsel referred to the decision rendered by the Hon'ble Supreme Court,

in the case of (Shree Bhagwati Steel Rolling Mills Vs. Commissioner of Central Excise) reported in [(2015) 326 E.L.T. 209 (SC)] wherein, it has been held that the interest and penalty provisions under the Rules 96ZO, ZP and ZQ of the Central Excise Rules 1994, are invalid. Therefore, the impugned order, by which, penalty and interest have been levied on the petitioner has to be necessarily set aside. Insofar as jurisdictional aspect of demanding duty is concerned, I find that the respondent has recorded that the petitioner-Unit was closed from 26.04.1998, and, it is also admitted that intimation regarding starting of production Unit has not been given. In such circumstances, the petitioner is entitled for abatement. This aspect has not been considered by the respondent, however, the other issue is with regard to jurisdictional aspect, where, the Assistant Commissioner would not have power to impose duty of Rs.90,00,000/-, as the power of the Assistant Commissioner for adjudication is upto Rs.5,00,000/-, in terms of Section 13 of CBEC instructions of adjudicating powers.

4.. For the reasons stated hereinabove, the Writ Petition is allowed, and the demand of penalty and interest are set aside, and with regard to the jurisdictional aspect of demanding duty, the matter is remanded to the appropriate authority to consider the plea of abatement in the case of the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To
The AssistantCommissioner of Central Excise,
Division-I,Thally Road, Hosur - 635 109.

+1cc to Mr.K.Jayachandran,Advocate sr.46693

+1cc to Mr.A.P.Srinivas,Advocate sr.46829

rj(co)
ss(19/7/2017)