IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM,

W.P.No.38105 of 2002

M/s.Surana Industries Ltd
Formerly known as
Surana Metals and Steels (India) Ltd.,
Old No.16, New No.29, Whites Road,
Royapettah,
Chennai - 600 014. ... Petitioner

vs.

1. The Joint Secretary to
   the Government of India,
   Ministry of Fincance
   (Department of Revenue)
   4th Floor, Jeevan Deep,
   Sansad Marg, Parliament Street,
   New Delhi - 110 001.

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

3. The Commissioner of Central
   Excise (Appeals),
   No.121, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai - 600 034.

4. The Assistant Commissioner of
   Central Excise,
   Chennai V Division,
   30, Jawaharlal Nehru Road,
   Koyambedu, Chennai - 600 107. ...Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in Order No.5/2001 dated 31.01.2002 and quash a portion of the above order and consequently direct the respondents 2 and 4 from forbearing them taking any further action pursuant to the order of the first respondent.

For Petitioner :   Mr.J.Shankararaman
For Respondents: Mr.A.P.Srinivas for R1 to R4

O R D E R

This Writ Petition has been filed challenging the order passed by the The Joint Secretary to the Government of India, Ministry of Fincance (Department of Revenue), in Order No.5/2001 dated 31.01.2002, exercising revisional power under Section 35EE of the Central Excise Act, 1944.

2. Heard Mr.J.Shankararaman, learned counsel for the petitioner as well as Mr.A.P.Srinivas, learned Senior Standing counsel for the respondents.

3. The learned counsel for the petitioner would submit that impugned order has been challenged only on the ground of lack of jurisdiction. In support of his contention he placed reliance on the decision of High Court of Punjab & Haryana in a case in NVR Forgings Versus Union of India reported in 2016 (335) E.L.T. 679 (P & H).

4. The learned counsel appearing for the respondents, on the other hand would submit that the said decision has been rendered by the Punjab and Haryana High Court recently and the impugned order was passed much prior to the said decision.

5. I have carefully considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

6. It has to be noted that the Punjab and Haryana High Court has considered the issue as to whether the respondent authority has the jurisdiction to act as a revisional authority over the order passed by the Appellate authority.

7. It is not in dispute that the said decision was put to challenge before the Hon'ble Supreme Court and the Special Leave to Appeal (C) .... CC 19063/2016 was dismissed on 17.10.2016. Thus, the said decision binds the respondent/revenue and the question of jurisdiction having been gone into and held against revenue, which will affect the validity of the impugned order.

8. Though the impugned order was passed in the year 2001, on the said ground of lack of jurisdiction, the impugned order is liable to be set aside and accordingly the same is set aside and the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vv/arr
To

1. The Joint Secretary to the Government of India,
   Ministry of Fincance (Department of Revenue)
   4th Floor, Jeevan Deep,
   Sansad Marg, Parliament Street,
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   Chennai V Division,
   30, Jawaharlal Nehru Road,
   Koyambedu, Chennai - 600 107.

+ 1 cc to Mr. S.P. Srinivas, Advocate Sr.48383

W.P.No.38105/2002 and

W.M.P.No.57094 of 2002

AR-J
EU 23.8.17