IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.7101 of 2008
and
M.P.No.1 of 2008

M/s.Sumangala Steels Private Limited,
Represented by its General Manager,
Mr.K.Vijayakumar,
MSI Area, Mettupalayam Industrial Estate,
Pondicherry 605 009. .. Petitioner

Vs.

1.Customs and Central Excise Settlement Commission,
Additional Bench, II Floor,
Narmada Block, Customs House,
60, Rajaji Salai, Chennai 600 001.

2.The Commisisoner of CentralExcise,
No.23, Gobart Avenue,
Beach Road, Pondicherry 605 001.

3.Additional Director General,
Directorate of General of Central Excise Intelligence,
Chennai Zonal Unit, C-3, 'C' WING, Rajaji Bhavan,
Besant Nagar,
Chennai 600 090. .. Respondents

Prayer:- Writ Petition is filed under Article 226 of Constitution of the India, to issue a Writ of Certiorari, calling for the records comprised in the impugned final order No.12/2008-C.Ex dated 28.02.2008 insofar as imposition of penalty and non-granting of cum-duty excise benefit to the petitioner on the file of the first respondent and quash the same.

For Petitioner : Mr.G.RM.Palaniappan

For Respondents : Mr.V.Sundreswaran for SPC

ORDER

The present writ petition has been filed challenging the impugned final order No.12/2008-C.Ex dated 28.02.2008 insofar as imposition of penalty and non-granting of cum-duty excise benefit to the petitioner on the file of the first respondent and quash the same.

2. The brief facts leading to the present Writ Petition is that the petitioner company are the manufacturers of Billets, falling under Chapter heading 72.07.90 of the Central Excise Tarrif and are registered with the second respondent. It seems that, the third respondent issued show cause notice No.55/2003 dated 05.11.2003 for confiscating the goods allegedly representing unaccounted production and imposed penalty under Section 25 of the Central Excise Rules, followed by a regular show cause notice in SCN No.35/05 dated 29.06.2005 was issued proposing to levy Central Excise duty of Rs.2,58,48,213/- allegedly representing duty on goods clandestinely removed during the period February 2002 to May 2003 besides penalty and interest.

3. The petitioner would further contend that Pursuant to the show cause notice issued by the third respondent, the petitioner, along with the co notices, has approached the first respondent in terms of Section 32E of the Central Excise Act, 1944. As against the duty amount of Rs.2,58,48,213, the petitioner admitted a liability of Rs.76,22,359/- after extending the benefit of cum duty.

4. The petitioner further contended that while admitting the application of the petitioner, the first respondent vide order dated 08.05.2007 and directed the petitioner to remit the differential duty on 5192.01 Mts which the petitioner duly complied with. However, when the matter was heard finally on 15.02.2008, the first respondent directed the petitioner to remit the duty on 7316.75 Mts for which the petitioner also agreed to do so. But the petitioner tried for the extension of cum-duty benefit in terms of the decision of the Hon'ble Supreme Court, which the first respondent declined to extend the benefit and finally settled the duty imposed on the petitioner to the tune of Rs.1,40,16,353/- in which the petitioner had already paid a sum of Rs.84,92,315/- towards the admitted duty liability and the respondent directed the petitioner to pay the balance liability of Rs.54,24,038 within a period of 30 days from the date of receipt of the impugned order. As against which, the present writ petition has been filed by the petitioner.

5. From the records, it could be seen that the writ petition was admitted and the rule was ordered as early as

31.03.2008 and Mr.V.Sundareswaran for SPC appeared for the respondents.

6. On perusal of the documents available and the arguments put forth by the learned counsel for the petitioner, it is not in dispute that the petitioner company is a manufacturer of MS Billets and based on the intelligent and it was able to intelligence by the petitioner's company, such operation was conducted in the petitioner's factory at Pondicherry as well as in Chennai on 08.05.2003. During such operation, which resulted in seizure of incriminating documents such as parallel sets of invoices, actual production documents, un-accounted raw-materials procurement details, and there was material evidence in the form of 680.987 MT of MS Billets, found un-accounted and in excess of production record, were also seized from the petitioner's factory.

7. Thereafter, the show cause notice was issued, proposing confiscation of the seized goods valued at Rs.92,75,724/- and further demanding a duty of Rs.2,58,48,213/- for the period from February 2002 to May 2003 and proposing penalties (vide two show cause notice Nos.55/2003 & 35/2005) respectively. It is also not in dispute that the petitioner admitted the said suppression and paid Rs.20 lakhs, as part payment towards past liability. The Commissioner of Central Excise has passed an adjudication by order dated 28.02.2007, for which, the Commissioner had confirmed the entire duty as proposed in the show cause notice besides imposition of equal penalty on the company and its directors and ordered confiscation of 680.987 MT of Billets.

8. Heard, the learned counsel for the petitioner and the learned counsel for the respondent and perused the available materials on record.

9. It is seen from the records that the petitioner made an application before the first respondent on 09.03.2007 before the Settlement Commission invoking under Section 32F of the Central Excise Act 1944. The petitioner submitted that Billets alleged to have been suppressed and not brought on records without payment of duty. The petitioner was directed to pay the differential duty on the basis of quantity of 5192.01 Mts as against the quantity of 4660.15 Mts on adjudication the Settlement Commission finally settle the duty amount of Rs.1,40,16,353/-, in which, the petitioner had paid a sum of Rs.84,92,315/- towards the admitted duty liability. The balance amount of Rs.54,24,038/- should be paid by the petitioner and questioning before this Court challenging the balance admitted duty liability imposed on the petitioner. Apart from claiming to grant cum duty benefit while calculating the duty payable by

them. The grounds raised down in this writ petition is narrow down only to the aspect whether the petitioner is liable for cum duty and where the imposition of penalty is to be interfered by this Court.

10. It could be also seen from the records primarily with regard to the claim on cum duty, the petitioner requested for extend the benefit of cum duty while calculating the duty payable by the petitioner. The conduct of the petitioner's company has to be looked into. The material evidence found during the investigation that 680.987 MT of MS Billets, where found unaccounted and in excess of production record, which is not denied by the petitioner and in fact admitting the offence, the petitioner had voluntarily paid an amount of Rs.2,58,48,213/-. The petitioner had remitted Rs.76,22,359/- after extending the benefit of cum duty. However, the benefit of cum duty was not accepted by the Settlement Commission for the only reason that the offense involved in the case of the petitioner was that the petitioner removed clandestinely Ms Billets, which is supported by the seizure of incriminating documents such as parallel sets of invoices, actual production documents indicating suppression of production, un-accounted raw materials procurement details. The records clearly shows that the petitioner has not proved with the price goods including the excess duty payable by him.

11. On the other hand, having not proved with the price goods included with the excess duty that the petitioner cannot expect of grant of cum duty benefit while calculating the duty payable by him. The petitioner had no intention to pay duty of the price received by the petitioner can only be treated as assessable value of the goods i.e., subject matter of the seizure by the department.

12. Under these circumstances, the petitioner has accepted and voluntarily made the payment towards pass liability to conduct of suppression of production, escaping central excise duty and un-accounted raw materials which has also been clandestinely removed to various byers which had escaped the excise duty. The petitioner cannot expect to grant the cum duty benefit while calculating the duty payable by him. Actually, no duty has been included while the petitioner was removing the MS Billets to various customers who purchase from him. In such cases, there cannot be any question of detection of duty where no duty has been actually included in the whole sale price, the Settlement Commission has ordered for rejection for grant of cum duty benefit cannot be interfered with. While coming to the second lim of arguments put forth by the petitioner with regard to the imposition penalty and show cause notice No.35/2005. The Settlement Commission imposed Rs.14,00,000/- (Rupees fourteen

lakhs only) on the petitioner as penalty, and also grant immunity over the penalty to the petitioner.

13. Section 32K of Central Excise Act, 1994 which as follows:

"32K. Power to settlement Commission to grant immunity from prosecution and penalty

> (1) The settlement Commission may, if it is satisfied that any person who made the application for settlement under Section 32E has co-operated with the settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act [and also either wholly or in part from the imposition of any penalty and fine] under this Act, with respect to the case covered by the settlement:
>
> PROVIDED that no such immunity shall be granted by the settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under Section 32E.
>
> (2) An immunity granted to a person under Sub-Section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under[sub-Section (5) of Section 32F within the time specified in such order], or fails to comply with any other condition subject to which the immunity was granted and there upon the provisions of this Act shall apply as if such immunity had not been granted.
>
> (3) An immunity granted to a person under Sub-Section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty

in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.”

14. This Section empowers the Settlement Commission to grant immunity from prosecution and imposed penalty on the assessee who make application under Section 32E before the Settlement Commission for adjudication of the escape excise duty or evasion of excise duty. In the present case, the petitioner who are the manufacturers of MS Billets suppressed 680.987 Mts Billets found un-accounted and in excess of the production records shall lapped with penalty. The petitioner has clandestinely removed the Billets to various of his buyers thereby escaping from the excise duty. The Settlement Commission excising its powers under Section 32K of Central Excise Act 1994, imposed the penalty of Rs.14,00,000 as penalty while granting immunity over the said penalty amount to the petitioner to the gravity offense committed by the petitioner's company suppressing 6.80.987 Millets procurement of raw materials and removing the same to various buyers thereby escaping from the duty payable by the petitioner is a very serious offense and the Settlement Commission has imposed 10% of the settled duty as penalty against the petitioner.

15. This Court do not find any infirmity in such levy of the penalty as against the petitioner and the petitioner cannot claimed exemption from the penalty and the Settlement commission has imposed penalty only after perusing the documents that were seized during the search operation conducted the petitioner premises factory and sufficient materials and proof were established by the department before the Settlement Commission. In addition to the admissions made by the petitioner admitting offense voluntarily such penalty cannot be interfered with. When such being the case in the above circumstances, I am of the view that the impugned order does not warrant any interference from this Court.

16. Accordingly, the Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja/vji

To

1. The Customs and Central Excise Settlement Commission,
   Additional Bench, II Floor,
   Narmada Block, Customs House,
   60, Rajaji Salai,
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SSD(CO)
GN(22/02/2019)