IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.397 of 2014
and M.P.No.1 of 2014

M/s.Metal Weld Electrodes,
No.98, Broadway,
Chennai - 600 108. .. Appellant

Vs.

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 IV Commissionerate,
   473, Anna Salai, Nandanam,
   Chennai - 600 035. .. Respondents

Prayer: Appeal filed under Section 35-G of Central Excise Act, 1944 against the common stay order Nos.595-596/2012 of CESTAT, dated 19.07.2012, passed in Appeal No.E/425/2010 on the file of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai . Appeal Preferred against the order of the customs Excise and service tax Appellate Tribunal Chennai. Order dated 08.07.2010 made in Appeal No.4/10 and Appeal preferred the order of the commissioner central excise Chennai IV.692 Annasalai Mau Complex Nandanam Chennai Order dt 29.3.10 made in C No V/15/83/109/2009.cx ADJ.IV Commissioner.

For Petitioner : Mr.M.N.Bharathi

For Respondent 2 : Mr.A.P.Srinivas

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J U D G E M E N T

(Judgement of the Court was made by S.MANIKUMAR, J.)

On 19.04.2018, we passed the following order:

> "Instant Civil Miscellaneous Petition has been filed against an order of pre-deposit.
>
> 2. On 11.04.2014, a Hon'ble Division Bench of this Court has recorded as hereunder:
>
> > "Pending the present appeal, it appears the Tribunal has dismissed the appeal itself for the non-compliance of the interlocutory order and therefore the appellant seeks time to file an appeal against the order of the Tribunal, to be posted along with this Appeal. Hence, list the matter on 24.07.2014, along with the appeal to be filed."
>
> 3. No representation for the appellant.
>
> 4. Mr.A.P.Srinivas, learned standing counsel is directed to ascertain as to whether any appeal has been filed against the final order of CESTAT, Chennai.
>
> Post on 23.04.2018."

2. Mr.M.N.Bharathi, learned counsel for appellant submitted that appeal in E/425,426/2010, in the matter of M/s.Metal Weld Electrodes Vs. Commissioner of Central Excise, Chennai IV, has been dismissed on 12.06.2014. Order reads thus:

> "By stay Order Nos.595-596/2012, dated 19.07.2012, the Tribunal directed the applicant to make pre-deposit a further amount of Rs.20,00,000/- and to report compliance on 20th September, 2012.
>
> 2. The learned Counsel appearing on behalf of the appellant submits that they have filed a Writ petition before the Hon'ble

> Madras High Court against the stay order passed by the Tribunal. He further submits that the Writ Petition was disposed of with the direction to file CMA. He submits that they filed the CMA, which is not listed till date.
>
> 3. On a query from the Bench the learned counsel for the appellant failed to produce any evidence in respect of the listing of matters or any stay order passed by the Hon'ble Madras High Court. As the appellant failed to produce any order from the appellate authority, we dismiss the appeal for non-compliance of the stay order of the Tribunal."

3. From the above, it is clear that interim order made in E/S.223/2010 dated 24.07.2012, of CESTAT, Chennai has merged with the final order in E.425, 426/2010, dated 12.06.2014.

4. In view of the subsequent order made in E/425,426/2010 dated 12.06.2014, we are not inclined to delve further to the challenge made to an interim order. It is well settled that interim order, merge with the final order. On the issue of merger, reference can be made to few decisions:

(i) In South Eastern Coalfields Ltd v. State of M.P. and others reported in (2003) 8 SCC 648, the Hon'ble Supreme Court held as follows:

> "The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it."

(ii) In Prem Chandra Agarwal and another v. Uttar Pradesh Financial Corporation and Others reported in (2009) 11 SCC 479, the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In State of West Bengal and Others Vs Banibrata Ghosh and Others reported in (2009) 3 SCC 250, the Hon'ble Apex Court held that the Interim Order doest not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

5. In the light of the above discussion and decisions, instant Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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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 IV Commissionerate,
   473, Anna Salai, Nandanam,
   Chennai - 600 035.

+1cc to Mr.S.Muthuvenkatraman, Advocate, S.R.No.31133

+1cc to Mr.A.P.Srinivasa, Advocate, S.R.No.30523

C.M.A.No.397 of 2014
and M.P.No.1 of 2014

KJ(CO)

RRK(27/04/2018)