

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19462 of 2016 &
W.M.P.No.16876 of 2016

M/s. India Furniture Products Ltd.,
Represented by its Manager (Accounts),
R.Kamalakkannan and
the authorized Signatory
G-106, SIDCO Industrial Estate,
Kakkalur, Thiruvallur ... Petitioner

Vs

1. The Commissioner of Central Excise,
Chennai - I, Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.
2. The Commissioner of Central Excise (Appeals)
No.121, M.G. Road, Nungambakkam,
Chennai - 600 034.
3. The Additional Commissioner of Central Excise,
Chennai - I, Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.
4. The Superintendent of Central Excise,
Thiruvallur-II,
Range, No.46,
Vallalar Street,
Periakuppam, Thiruvallur - 602 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the Impugned Order in Original No.5/2015, dated 27.08.2015 passed by the 3rd Respondent and quash the same in so far as it confirms a demand of Rs.4,86,628/- under Rule 14 of the Cenvat Credit Rules, 2004

r/w. Section 11A of the Central Excise Act, 1944 and imposes penalty and interest under the aforesaid Act and the Rules.

For Petitioner : Mr.R.Anish Kumar

For Respondents : Mr.A.P.Srinivas
Standing Counsel

O R D E R

Heard Mr.R.Anish Kumar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the Respondents.

2. The petitioner has filed this Writ Petition challenging the order passed by the 3rd respondent. The impugned order is an appealable order. However, on going through the affidavit filed in support of the Writ Petition, it is seen that the petitioner was not aware of the impugned order and the company was also facing serious financial problems and therefore, the petitioner could not pursue the appeal remedy within time.

3. Though under normal circumstances, this Court will not entertain a challenge to the order-in-original in a Writ Petition, considering the peculiar facts and circumstances, this Court has entertained the writ petition and the same is pending since 2016.

4. Thus, without rejecting the writ petition on the grounds of technicalities, this Court is inclined to give liberty to the petitioner to file an appeal before the Appellate Authority challenging the impugned order. Further, one more reason for granting liberty to file an appeal on account of the following decisions:

(i) 2005(6) SCC 499 [State of H.P. and others v. Gujarat Ambuja cement Ltd. and another]

(ii) 2008(221)E.L.T. 163 (S.C.) [Singh Enterprises v. Commissioner of Central Excise, Jamshedpur]

5. Accordingly, this Writ Petition is disposed of by giving liberty to the petitioner to file an appeal before the Appellate Authority, viz., the Commissioner (Appeals), within a period of 15 days from the date of receipt of a copy of this order and if such an appeal is filed, the Commissioner (Appeals) shall entertain the appeal without rejecting the same on the ground of

limitation and also take note of the payment of Rs.50,000/- made by the present petitioner pursuant to the interim direction issued by this Court. It is to be noted that this order shall not be treated as precedent. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Rj/mkn

To

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+1 CC to Mr.A.P. Srinivasan, Advocate sr 52555.

+1 CC to Mr.A. Anish Kumar, Advocate sr 52479.

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CNR(CO)
SP(18/06/2018)

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