IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4942 of 2013 and MP.Nos.1 & 2 of 2013

Sels Automotive and Fabrication (P) Ltd.
Rep.by its Managing Director E.Selvaraj
(Formerly having factory at No.36, Andal Nagar,
Ponneri High Road,
Manali New Town, Chennai-600 103.
(Now having address at)
No.19, State Bank Officers Colony
Thiruvottriyur,
Chennai-600 019. ...Petitioner

Vs.

1. The Deputy Commissioner of Central Excise,
'C' Division, Chennai I Commissionarate,
C-48, TNHB Complex, II Avenue,
Anna Nagar, Chennai-10.

2. The Commissioner of Central Excise (Appeals),
Office of the Commissioner of Central Excise (Appeals)
No.26/1, Mahatama Gandhi Road,
Nungambakkam,
Chennai-600 034.

3. The Superintendent,
Office of the Superintendent of Central Excise,
C-2 Range-
C Division Chennai-I Commissionerate,
C-48, TNHB Complex, II Avenue,
Anna Nagar, Chennai-10. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in Pre-deposit cum Appeal Order No.04/2013 (M-I) (PD) dated 16.01.2013 passed by the 2^{nd} respondent and quash the same and consequently direct the 2^{nd} respondent to hear the appeal No.31/2010 (M-I) and the stay petition on merits.

For Petitioner : Mr.M.Abdul Nazeer
For Respondents : Mr.K.S.Ramasamy, Senior Panel counsel

O R D E R

The petitioner is before this Court challenging an order passed by the 2nd respondent dated 16.01.2013, wherein the 2nd respondent directed the petitioner to pre-deposit 50% of the Central Excise Duty as a condition precedent for hearing the appeal. On a perusal of the impugned order, it is seen that none appeared on behalf of the petitioner, when the waiver application was heard by the 2nd respondent.

2. The petitioner's contention is that no proper notice was served on them and the petitioner's Driver is said to have received the notice when the petitioner was not available in Chennai. It is submitted that the condition directing the petitioner to pre-deposit 50% of the Central Excise Duty is onerous. Further it is submitted that the case on hand is squarely covered in favour of the petitioner by various decisions. The petitioner also placed reliance on the decisions in several other cases filed by other similarly placed persons whose appeals were allowed. That apart, it is seen that the writ petition has been pending since the year 2013 and the order of stay is in operation consequently, the appeal is yet to be disposed of. Thus, considering the contention raised by the petitioner and that there are other orders passed in favour of the similarly placed persons, this Court is of the view that if the petitioner is directed to pre-deposit 50% of the duty demanded, they will be put to undue hardship. In the light of the above, the impugned order is set aside and the 2nd respondent is directed to hear and decide the appeal petition on merits after affording an opportunity of personal hearing to the authorised representative of the petitioner.

3. Thus, for all the above reasons, the writ petition stands allowed. Consequently connected miscellaneous petitions are also closed. No Costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

sk/kak

To

1. The Deputy Commissioner of Central Excise,
   'C' Division, Chennai I Commissionarate,
   C-48, TNHB Complex, II Avenue,
   Anna Nagar, Chennai-10.

2. The Commissioner of Central Excise (Appeals),
   Office of the Commissioner of Central Excise (Appeals)
   No.26/1, Mahatama Gandhi Road,
   Nungambakkam,
   Chennai-600 034.

3. The Superintendent,
   Office of the Superintendent of Central Excise,
   C-2 Range-
   C Division Chennai-I Commissionerate,
   C-48, TNHB Complex, II Avenue,
   Anna Nagar, Chennai-10.

+1 CC to Mr.M. Abdul Nazeer, Advocate sr 5616.
+1 CC to Mr.K.S. Ramasamy, Advocate sr 5447.

W.P.No.4942 of 2013

RJ(CO)
SP(16/02/2018)