

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.Nos.16559 of 2004 & 24681 of 2001
and
WP.MP.No.19574 of 2004

M/S.T.N.S.S.Steels Ltd.,
Rep. by its Director Thomas Thartaus,
Ship Breaking Yard,
Valikokkam,
Ramanad District. ...Petitioner in WP.16559/04

M/S.T.N.S.S.Steels Pvt. Ltd.,
Rep. by its Managing Director,
Sri C.Vijayakumar,
No.8, Rathasabapathy Street,
Chennai - 600021. ...Petitioner in WP.24681/01

Vs

1. The Customs Excise and Service Tax Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Haddows Road, Nungambakkam,
Chennai.
2. The Commissioner of Customs (Appeals),
No.1, Williams Road,
Contonment, Trichy. ...1st and 2nd Respondents in WP.16559/04

1. The Customs Excise and Gold (Control) Appellate Tribunal,
South Regional Bench,
No.26, Haddows Road,
Shastri Bhavan Annexe,
Chennai. ...1st Respondent in WP.24681/01

The Assistant Commissioner of Customs,
Customs Division,
Ramnad. ...3rd respondent in WP.16559/04 and
2nd respondent in WP.24681/01

PRAYER in WP.No.16559 of 2004: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorarified Mandamus or any other Writ or any order or direction in the nature of a Writ, calling for records relating to the final order No.640 of 2004 (Appeal No.C.126 of 2003) dated 29.03.2004 passed by the 1st respondent and quash the same as illegal, unsustainable and arbitrary and consequently, direct the 3rd respondent to allow the abatement claim of the petitioner.

PRAYER in WP.No.24681 of 2001: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorarified Mandamus or any other Writ or any order or direction in the nature of a Writ, calling for records relating to the final order No.424 of 2001 (C/592/96)MD dated 26.03.2001 passed by the 1st respondent and to quash the same as illegal, unsustainable and arbitrary and consequently, direct the 2nd respondent to grant remission of duty of Rs.7,83,435.90 claimed by the petitioner.

For Petitioners : Mr.K.Jayachandran
in both WPs

For Respondents : Tribunal for R1
in both WPs

Mr.A.P.Srinivas, SSC
for R2 and R3 in WP.16559/04 and
for R2 WP.24681/01

C O M M O N O R D E R

1. The prayer sought for in WP.No.16559 of 2004 is to call for records relating to the final order No.640 of 2004 (Appeal No.C.126 of 2003) dated 29.03.2004 passed by the 1st respondent and quash the same as illegal, unsustainable and arbitrary and consequently, direct the 3rd respondent to allow the abatement claim of the petitioner.

2. The prayer sought for in WP.No.24681 of 2001 is to call for records relating to the final order No.424 of 2001 (C/592/96)MD dated 26.03.2001 passed by the 1st respondent and to quash the same as illegal, unsustainable and arbitrary and consequently, direct the 2nd respondent to grant remission of duty of Rs.7,83,435.90 claimed by the petitioner.

3. Section 130 read with Section 130-C of the Customs Act, provides for an appeal against the final order of the Appellate

Tribunal in both the Writ Petitions. As such, the Writ Petitions challenging the order of the Customs Act, is not maintainable. Since the memorandum of appeal is required to be filed in the prescribed form by framing a substantial question of law involved, it would not be appropriate to place this matter before the Division Bench also.

4. It is further seen that the Writ Petitions have been filed on 12.12.2001 (WP.No.24681 of 2001) and 16.06.2004 (WP.No.16559 of 2004), which is within the limitation prescribed for preferring an appeal under Section 130 of Customs Act and as such, I am of the view that the petitioners can be given an opportunity to file an appeal as against the order impugned in the Writ Petitions.

5. In the light of the above observations, the Writ Petitions stand closed, with a liberty to the petitioners to challenge the order of the Appellate Tribunal, dated 29.03.2004 and 26.03.2001, by way of an appeal before this Court, within 30 days from the date of receipt of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

hvk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Customs Excise and Service Tax Appellate Tribunal,
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Haddows Road, Nungambakkam,
Chennai.
2. The Commissioner of Customs (Appeals),
No.1, Williams Road,
Contonment, Trichy.
3. The Customs Excise and Gold (Control) Appellate Tribunal,
South Regional Bench,
No.26, Haddows Road,
Shastri Bhavan Annexe,
Chennai.

4. The Assistant Commissioner of Customs,
Customs Division,
Ramnad.

+2CCs to Mr.K.Jayachandran, Advocate, S.R.No.10594 & 10593/19
+2CCs to Mr.A.P.Srinivas, Advocate, S.R.No.10314 & 10313/19

WP.Nos.16559 of 2004 & 24681 of 2001
and
WP.MP.No.19574 of 2004

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