IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.4760 and 4761 of 2009

& M.P.Nos.2 and 2 of 2009

M/s.Rattan Steel Works
represented by its Partner Mr.Harjit Singh,
No.1/36, E, North Parade Road,
St. Thomas Mount, Chennai -16. ...Petitioner in both W.Ps

Vs

1. The Deputy Commissioner of Central Excise,
Tambaram Division,
130 B, Mudichur Road,
Tambaram, Chennai 45.

2. The Assistant Commissioner of Central Excise,
Tambaram Division,
130 B, Mudichur Road,
Tambaram, Chennai 45

3. The Superintendent of Central Excise,
Tambaram Division,
130 B, Mudichur Road,
Tambaram, Chennai 45 ... Respondent 1 to 3 in both W.Ps.

4. The Commissioner of Central Excise (Appeals)
26/1 Mahatma Gandhi Road, Chennai - 34

..Respondent No.4 in W.P.No.4761 of 2009

Prayer in W.P.No.4760 of 2009: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the 2nd respondent in OIO.No.32/2001 dated 12.09.01 and quash the same as being invalid and against the facts and law.

Prayer in W.P.No.4761 of 2009: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the 1st respondent in OIO.No.69/2003 dated 30.09.2003 and the connected appeal proceeding of the 4th respondent in OIO No.97 of 2004 dated 10.08.04 and quash the same are being illegal in valid and against the facts and law.

For Petitioner : Mr.D.Vijayakumar
For Respondents : Mr.A.P.Srinivas,
Sr. Standing Counsel

C O M M O N O R D E R

This common order is passed in W.P.Nos.4760 and 4761 of 2009, the first relating to a challenge to an Order - in - Original dated 12.09.2001 demanding duty for the periods 01.04.1998 to 31.03.2000 under three show cause notices and the second Writ Petition challenging an order levying penalty/interest under Rule 96ZP(3) of the Central Excise Rules, 1994.

2. As far as W.P.No.4761 of 2009 is concerned, learned counsel for the petitioner circulates a copy of the judgment of the Supreme Court in the case of Sri Bhagwati Steel Rolling Mills v. Commissioner of central Excise (2015 (326) ELT 209) , which has taken into account the provisions of Rule 96ZP and has held the provision to be invalid.

3. In the light of the same, the order imposing penalty is liable to be set aside and I do so.

4. Now coming to W.P.No.4760 of 2009, the Assessing Authority has issued three show cause notices to the petitioner, two dated 30.12.1999 and one dated 16.05.2000. The petitioner has admittedly not responded to the same. Learned counsel for the petitioner states that the unit was itself closed as early as in November, 1997 and this fact is duly intimated to the Department on 20.11.1997. Thus according to him the levy of duty ought to be set aside.

5. The communications filed by the petitioner before the Assessing authority proceed on the basis that the petitioner has stopped manufacturing since 19.11.1997, which statement appears to be factually incorrect in the light of the admission by the assessee in reply to another show cause notice dated 26.04.1999, wherein it states that the unit was not in operation for the periods 04.09.1997 to 02.10.1997 and 19.11.1997 to 31.03.1998 only.

6. The question whether the petitioners' unit has stopped production or not is thus a disputed question of fact, which this Court is not inclined to go into at this juncture and in a proceeding under Article 226 of the Constitution of India.

7. Reliance placed by the petitioner on the proceedings issued under show cause notice 26.04.1999 and the co-operation extended by the petitioner in those proceedings are of no avail as far as the present proceedings are concerned.

8. Accordingly, W.P.No.4760 of 2009 is dismissed and W.P.No.4761 of 2009 is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Central Excise,
   Tambaram Division,
   130 B, Mudichur Road,
   Tambaram, Chennai 45.

2. The Assistant Commissioner of Central Excise,
   Tambaram Division,
   130 B, Mudichur Road,
   Tambaram, Chennai 45

3. The Superintendent of Central Excise,
   Tambaram Division,
   130 B, Mudichur Road,
   Tambaram, Chennai 45

4. The Commissioner of Central Excise (Appeals)
   26/1 Mahatma Gandhi Road, Chennai - 34

+1cc to Mr.D.Vijaya Kumar, Advocate, SR.No.84290/19
+1cc to Mr.A.P.Srinivas, Advocate, SR.No.84419/19

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& M.P.Nos.2 and 2 of 2009

Kak(07/11/2019)