IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.37762 of 2004

M/s.Jai Hind Wire Rod Mills Ltd,
Rep by its Director,
G.E.govindaraj,
12/1-A Nattamangalam Road,
Amani Kondalampatti,
Salem - 636 010. ... Petitioner

Vs.

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem - 636 001. ... Respondent

Prayer: Writ Petition is filed under article 226 of the Constitution of India, directing the respondent to finalise the assessment of the petitioner - Industries Unit as directed by the Hon'ble Supreme Court in its decision in 2001 (133) ELT 513 with consequential relief of refund of Rs.48,46,471.00 with interest at 18% per annum.

For Petitioner : Mr.K.Jayachandran
For Respondent : M/s.Hema Muralikrishnan, SC

ORDER

The present Writ Petition has been filed to direct the respondent to finalise the assessment of the petitioner - Industrial Unit as directed by the Hon'ble Supreme Court in its decision in 2001 (133) ELT 513 with consequential relief of refund of Rs.48,46,471.00 with interest at 18% per annum.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.The Hon'ble Supreme Court in Union of India Vs. Supreme Steels and General Mills 2001 (133) E.L.T. 513 (S.C) has held:-

> "3.In so far Rule 96ZO is concerned, Shri A.K.Ganguli, learned counsel appearing on behalf of the manufacturers submitted that the part of sub-rule 3 which provides that in case

excise duty is paid according to the said sub rule in that event the manufacturer shall not avail of the benefit under sub-s (4) of Section 3A of the Central Excise Act, 1944 is bad. The relevant part of sub-rule (3) of Rule 96Z0 reads as under:-

"(3) Notwithstanding anything contained elsewhere in these rules, if a manufaturer having a total furnace capacity of 3 metric tonnes installed in his factory so desires, he may, from the first day of September, 1997 to the 31st day of March, 1998 or any other financial year as the case may be pay a sum of rupees five lakhs per month in two equal installments the first installment latest by the 15th day of each month, and the second installment latest by the last day of each month, and the amounts so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year as the case may be subject to the condition that the manufacturer shall not avail of the benefit, if any, under sub-section (4) of the Section 3A of the Central Excise Act, 1944 (1 of 1944):

Provided that for the month of September, 1997 the Commissioner may allow a manufacturer to pay the sum of rupees five lakhs by the 30th day of September, 1997: (emphasis supplied).

Provided............"

The submission is that final liability for payment of excise duty would be asessable at the end of the year; therefore in case a liability on the basis of actual production is less the manufacturer should be allowed the benefit of sub-s. 4 of Section 3A of the Central Excise Act, 1944. It is contended that sub-rule 3 of Rule 96ZO cannot take away any benefit which may accrue to the manufacturer under the provisions of the Act. The argument however does not appeal to us. It was absolutely optional for the manufacturer to opt for payment of excise duty in accordance with sub-rule 3 of Rule 96ZO) on the basis of total furnace capacity installed as provided therein. The manufacturer cannot opt twice during one financial year first choosing to pay in accordance with sub-rule 3 of Rule 96ZO and thereafter to switch over to actual production basis under Section 3A(4) of the Act, in case it is less than the duty payable under sub-rule 3 of Rule 96ZO. The said sub rule is quite clear that the option under it is available subject to the condition that once having opted for it, benefit if any under sub-s.(4) of Section 3A of the Central Excise Act, 1944 shall not be available. We find that the controversy sought to be raised stands finally settled by a decision of this Court reported in JT2000 (4) SC 77-Commissioner of Central Excise & Customs v.M/s.Venus Castings (p) Ltd. It has been clearly held that two procedures namely one as provided under sub-s. (4) of Section 3A of the Central Excise Act and the other as provided under sub-rule 3 of Rule 96ZO of Central Excise Rules are alternative procedures and the assessee has to opt for one. Once having done so he cannot claim the benefit of the other.

4.In view of what has been indicated above in this order all the cases of the bunch stand finally disposed of accordingly. Costs easy."

4.The respondents may pass appropriate order in terms of the above ratio of the Hon'ble Supreme Court within a period of 3 months from the receipt of this order and finalize the pending proceedings in accordance with law.

5.Accordingly, the Writ Petition stands disposed of with the above direction.

Sd/-
Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem - 636 001.

+1 cc to M/s.K.Jayachandran,Advocate Sr.No. 100487
+1 cc to M/s.Hema Muralikrishnan, Advocate Sr.No.100319

AKM/27.01.2020/4P-4C /

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