IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.8281 of 2009
and
M.P.No.1 of 2009

M/s.Jayashree Aluminium & Alloys
Rep., by its sole Proprietor S.Sridharan,
No.61, SSOA Complex,
Vanagaram Main Road,
Athipet, Chennai 600 058. ... Petitioner

Vs.

1.Deputy Commissioner of Central Excise,
Chennai II Division,
Office of the Deputy Commissioner of Central Excise,
Chennai II Division, Chennai II Commissionerate,
R-40, A-1, Hundred Feet Road, Mogappair East,
Chennai 600 037.

2.Assistant Commissioner of Central Excise,
Chennai II Division
Chennai II Commissionerate,
R-40, A-1, Hundred Feet Road, Mogappair East,
Chennai 600 037. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records pertaining to the Impugned Notice of Attachment dated 30.3.2009, in C.No.IV/16/121/06-TRC passed by the First Respondent and quash the same.

For Petitioner : Mrs.Rathina Ashohan

For Respondents : Mrs.Aparna Nandakumar
Central Government Standing Counsel

ORDER

The petitioner challenges a notice of attachment dated 30.03.2009 passed by the Deputy Commissioner of Central Excise/R1.

2.The admitted facts in this case are that an order of adjudication was made on 20.10.2005 imposing duty, interest and penalty upon the petitioner. As against the aforesaid order, a statutory first appeal was filed before the Commissioner (Appeals), which was partly allowed, confirming the demand of duty and setting aside the levy of penalty. This order of the Commissioner (Appeals) was taken in appeal only by the assessee before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) which, by order dated 21.11.2008, confirmed the same. The setting aside of the penalty by the first appellate authority has been accepted by the department and not challenged in appeal.

3.In the aforesaid circumstances, there is absolutely no justification in law or otherwise for the impugned order of attachment, to have been passed by the revenue. The attachment appears to be based upon a corrigendum to the order-in-original. According to the petitioner, this corrigendum has not been served on the assessee and had this been done, the same would have been brought to the notice of the first appellate authority to be included within the cover of the order passed by him. The facts are really not disputed by learned standing counsel, who, fairly does not contest the writ petition very seriously.

4.Hence, recording the above, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commissioner of Central Excise,
   Chennai II Division,
   Office of the Deputy Commissioner of Central Excise,
   Chennai II Division, Chennai II Commissionerate,
   R-40, A-1, Hundred Feet Road, Mogappair East,
   Chennai 600 037.

2. The Assistant Commissioner of Central Excise,
   Chennai II Division
   Chennai II Commissionerate,
   R-40, A-1, Hundred Feet Road, Mogappair East,
   Chennai 600 037.

+1 cc to M/s.Aparna Nandakumar,Advocate Sr.No. 84128

AKM/22.11.19/3P-4C /

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