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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CEAC 54/2018 & CM Appl. 54252-54253/2018

MUKESH KUMAR GUPTA ..... Petitioner

Through: Mr. Mohit Khanna & Mr. Ajit Kumar, Advs.

versus

COMMISSIONER OF CENTRAL EXCISE ..... Respondent

Through: Mr. Amit Bansal, Sr. Std. Counsel with Mr. Akhil Kulshrestha, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **11.02.2019**

1. The question of law urged by the appellant is with respect to the orders of the Lower Appellate Authorities including CESTAT, which are pending adjudication.

2. Pursuant to the investigations carried out by the Central Excise Authorities, the appellant was issued a Show Cause Notice alleging its role in clandestine removal of copper wires. The assessee had claimed that its production and clearance was below the statutory value and therefore, not registered. During the course of investigation, the assessee/appellant proprietor's statements were recorded. In these, he broadly stated that the production undertaken in the unit was on job-work basis, on behalf of the Mahavir Rolling Mills. The Adjudicating Authority in the order-in-

original disbelieved the statement and also rejected the arguments made on its behalf. The Adjudicating Authority determined that the duty liability in respect of the quantity of 166596.3 Kgs. less the quantity attributable to the M/s Tirupati Industries, were clandestine, being removed without following the procedure prescribed by law and that the appellant was liable for it. The duty liability was determined at Rs.68,96,478 and penalty of like amount apart from the personal penalty of Rs.5,000/- was upon the appellant. On appeal by the assessee, the CESTAT affirmed the order of the Adjudicating Authority.

3. It is urged on behalf of the assessee by Mr.Mohit Khanna, that the adjudicating authorities including CESTAT fell into error in not taking into consideration the circumstances that the assessee/proprietor had all along maintained that, the goods were being manufactured on behalf of Mahavir Rolling Mills and that the appellant did not possess the financial capacity to purchase the raw material of the magnitude that was ascribed to it. It is submitted furthermore that even though the appellant/proprietor made statements which were recorded, both the adjudicating officer and the CESTAT ignored the material circumstances that Mahavir Rolling Mills was also known as Tirupati Industries.

4. This Court has considered the materials on record. The adjudicating authority in this case not only relied upon the statements made in the course of the proceedings but also on other evidences, such as inferences drawn by seizure of notebooks and other documents [especially two notebooks of Neelgagan and Saraswati]. These were taken into account, and separate findings were rendered with respect to the duty and penalty liability of Tirupati Industries on the one hand and that of the appellant/assessee on the

other. As to whether Tirupati Industries also had an alias as Mahavir Rolling Industries and the alleged irregularity of the lower authorities in not taking that into account, that is a material of detail and in the opinion of this Court is not a substantial question of law. The Court is satisfied that the findings recorded by the lower authorities do not call for interference.

5. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 11, 2019

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