IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 19764 of 2012
and
M.P. No. 1 of 2012

M/s. Kamachi Steels Ltd.,
Rep. by its Director: Vinod Kothari,
Durainallur Village,
Ponneri Taluk,
Tiruvallur District. ...Petitioner

-vs-

1. The Deputy Commissioner of Central Excise,
Chennai V Division,
Chennai II Commissionerate,
M.H.U. Complex,
No. 692, Anna Salai,
Nandanam,
Chennai - 600 035.

2. The Superintendent of Central Excise,
Ponneri Range,
No. 30, Railway Station Road,
Ponneri - 601 204. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings in O.C. No. 703/2012 dated 04.07.2012 issued by the Second Respondent and to quash the same as illegal, without authority of law and unsustainable.

For Petitioner : Mr. M.A.Mudimannan
For Respondents : Mr. B.Rabu Manohar, Standing Counsel

O R D E R
(through video conference)

Heard Mr. M.A.Mudimannan, Learned Counsel for the Petitioner and Mr. B.Rabu Manohar, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2.The Second Respondent in the Order in O.C. No. 703/2012 dated 04.07.2012 rejected the request made by the Petitioner for exemption from filing CAS 4 Certificate for assessment of goods and required the Petitioner to submit the said Certificate for the year 2010-2011 and pay differential duty, if any, along with interest immediately. The grievance sought to be ventilated by the Petitioner in this Writ Petition challenging that order is that in the representation dated 08.06.2012, the Petitioner had specifically referred to the decisions covering the subject and in particular the ruling of the Larger Bench of the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai in Ispat Industries Ltd., -vs- Commissioner of Central Excise, Raigad [2007 (209) ELT 185 (Tri-LB], but the same has not even been considered in the impugned order. It is further contended that in the event of the Second Respondent not accepting the contentions of the Petitioner, the demand for any dues or recovery would have to be made following the procedure prescribed under the law after determining the liability and could not be straight away made while rejecting the request for exemption.

3.On a perusal of the impugned order, it is evident that the aforesaid submissions made by the Learned Counsel for the Petitioner is justified and deserves acceptance. There is no gainsaying that the authorities under the statute are bound by the rulings of the judicial authorities and have to take cognizance of the same while deciding the subsequent matters which arise for consideration. It is, no doubt, true that the applicability or otherwise of the earlier decisions to the facts of the case is a matter which requires examination, but the same cannot be simply ignored without even making any reference to the same while passing orders, as has happened in this case. Likewise, even if the request for exemption is not accepted, the demand for the excise duty payable could be made only after determining the amount due following the prescribed procedure.

4.In that view of the matter, it is not possible to sustain the impugned order, which is set aside and the matter is remitted to the Second Respondent for fresh consideration in the light of the aforesaid conclusion arrived by this Court. It is incumbent upon the Second Respondent to afford full opportunity of personal hearing to the Petitioner, deal with each of the contentions raised by the Petitioner and pass reasoned orders on merits and in accordance with law following the prescribed procedure in consonance with the principles of natural justice and communicate the decision taken to the Petitioner under written acknowledgment.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

vjt/dm

To

1. The Deputy Commissioner of Central Excise,
Chennai V Division,
Chennai II Commissionerate,
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No. 692, Anna Salai,
Nandanam,
Chennai - 600 035.

2. The Superintendent of Central Excise,
Ponneri Range,
No. 30, Railway Station Road,
Ponneri - 601 204.

+1cc to Mr.K.Jayachandran, Advocate, SR.No.36412
+1cc to Mr.B.Rabu Manohar, Advocate, SR.No.36453

W.P. No. 19764 of 2012

NRJK(CO)
KKV/03/12/2020