IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.02.2020
CORAM
THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
Writ Petition No.17720 of 2005

M/s.The Bharat Steel Industries
Rep.by its Managing Partner
Mr.P.Muthuswamy, No.67/1B
Ennore High Road, Thiruvottiyur
Chennai 600 019. ... Petitioner

-Vs-

1.Superintendent of Central Excise
Range D-1, Division 'D'
Chennai-I Commissionerate
No.1775, Jawaharlal Nehru Inner
Ring Road, Anna Nagar West Extn.
Chennai 600 101.
2.Customs Excise and Service Tax Appellate
Tribunal, South Zonal Bench, Shastri Bhavan
Annexe, 1st Floor, 26, Haddows Road
Chennai 600 006. .. Respondents

For Petitioner : Mr.Hari Radhakrishnan
for M/s.S.S.Radhakrishnan
For Respondents : Mrs.Hema Muralakrishnan,
Sr.Standing Counsel

Prayer : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the case pertaining to demand notice issued by the first respondent unde OC No.693/2005 dated 04.05.2005 demanding interest at the rate of 18% per annum and quash the same as arbitrary.

O R D E R
(Order of the Court was made by DR.VINEET KOTHARI, J.)

The present writ petition has been directed against the communication / order of the Superintendent of Central Excise addressed to the petitioner M/s.Bharat Steel Industries dated 04.05.2005, levying interest at the rate of 18% on the demand of excise duty raised against the petitioner under the Order-in-Original No.47/2003 dated 07.07.2003 amounting to Rs.3,14,256/- besides the penalty of Rs.1,55,000/-.

2. Learned counsel for the petitioner submitted that the petitioner Assessee has already deposited the aforesaid amount of duty and penalty with the respondent department and the only dispute in the present writ petition is against the levy of the interest by the respondent department under Rule 96ZP(3) of Central Excise Rules, 1944. He has further submitted that the Honourable Supreme Court in "Shree Bhagwati Steel Rolling Mills -Vs- Commissioner of Central Excise" reported in 2015 (326) E.L.T.209 (S.C.), has struck down the said Rule 96ZP itself and therefore the impugned demand of interest by the said communication dated 04.05.2005 cannot survive.

3. The relevant paragraph Nos.31 and 44 of the said judgment of the Honourable Supreme Court are quoted below for ready reference.

> "31. Applying the Constitution Bench decision stated above, it will have to be declared that since Section 3A which provides for a separate scheme for availing facilities under a compound levy scheme does not itself provide for the levying of interest, Rules 96ZO, 96ZP, 96ZQ cannot do so and therefore, on this ground the appellant in Shree Bhagwati Steel Rolling Mills has to succeed. On this ground alone, therefore the impugned judgment is set aside.
> ......
> ....
> 44. Conclusion: We have declared in this judgment that the interest and penalty provisions under the Rules 96ZO, ZP and ZQ of the Central Excise Rules, 1994 are invalid for the reasons assigned in the judgment. Accordingly the appeals filed by the Revenue are dismissed and the appeals filed by the assessees are allowed to the extent indicated above. It may be noted that in an appeal from a judgment of the Allahabad High Court dated 08.11.2012 in SLP (C) No.9796/2013, it has been held that the levy of penalty under the aforesaid provisions is mandatory in character. In view of what has been held by us today, this appeal will also have to be allowed in the same terms as the other assessee's appeals which have been allowed. All the aforesaid appeals are disposed of accordingly."

4. Having heard the learned counsel for the parties, we are satisfied that the present writ petition deserves to be allowed on the basis of the aforesaid judgment of the Honourable Supreme Court, as the Rule levying such interest itself has been struck down by the Honourable Supreme Court for the reason that there is no substantive provision for levy of such interest in the main charging provision under Section 3A of the Act.

5. Accordingly, the present writ petition is allowed and the impugned communication / order of the Superintendent of Central Excise dated 04.05.2005 demanding interest at the rate of 18% under Rule 96ZP(3) of the Central Excise Rules, 1944 is hereby quashed and set aside. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

KST

To

1.The Superintendent of Central Excise
Range D-1, Division 'D'
Chennai-I Commissionerate
No.1775, Jawaharlal Nehru Inner
Ring Road, Anna Nagar West Extn.
Chennai 600 101.

2.The Customs Excise and Service Tax Appellate
Tribunal, South Zonal Bench, Shastri Bhavan
Annexe, 1st Floor, 26, Haddows Road
Chennai 600 006.

+1 cc to M/s.Hari Radhakrishnan Advocate sr12499
+1 cc to M/s.Hema Muralikrishnan Advocate sr11292

W.P.No.17720 of 2005

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