IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

C.M.A Nos.3235 to 3238 of 2007
and
M.P.Nos.1 of 2007

The Commissioner of Central Excise,
Central Excise Commissionerate,
No.1, Williams Road,
Tiruchirapalli - 620 001. ...Appellant in all CMAs

Vs

1. Cutsoms, Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annex,
No.26, Haddows Road,
Chennai - 600 006. ...1st Respondent in all CMAs

2. M/s.Sree Aravind Steels Ltd.,
D92-94, Industrial Estate,
Thuvakudi,
Trichy - 620 015. ...2nd Respondent in CMA.No.3235/2007

2. M/s.Arudra Steel Rolling Mills,
14A, EVR Road, Puthur,
Trichy - 620 017. ...2nd Respondent in CMA.No.3236/2007

2. Shri.P.Sreenivasulu Reddy,
Managing Director,
M/s.Arudra Steel Rolling Mills,
and CEO of M/s.Sree Aravind Steels Ltd.,
14A, EVR Road, Puthur,
Trichy - 620 017. ...2nd Respondent in CMA.No.3237/2007

2. Shri.Arun Shankar,
Managing Director, M/s.Sree Aravind Steels Ltd.,
D92-94, Industrial Estate,
Thuvakudi, Trichy - 620 015. ...2nd Respondent in CMA.No.3238/2007

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 35G of the Central Excise Act, 1944 against the order dated 08.03.2007 made in Final Order Nos.430 to 433/2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.Mohanamurali in all appeals

For Respondents: Mr.S.Murugappan for R2
Mrs.R.Hemalatha for R1 - Tribunal in all appeals

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam,J)

These appeals have been filed by the Revenue under Section 35G of the Central Excise Act, 1944 challenging the order dated 08.03.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai ('the Tribunal' for brevity) in Final Order Nos.430 to 433/2007.

2. The appeals were admitted on 15.02.2008 on the following substantial question of law:

> "Whether, in the facts and circumstances of the case, the Tribunal is right in interpreting the words and phrase "the person chargeable with the duty" in the main part of sub-section (1) of Section 11A of the Central Excise Act, 1944 and the words "by such person or his agent" in the Proviso to mean that only one person can be charged with the duty on a given goods and to set aside, on the line of the above interpretation, the Show-Cause Notices demanding duty from two companies SAS and ASRM, who jointly involved in the manufacturing of the goods clandestinely removed?"



3. We have heard Mr.Mr.K.Mohanamurali, learned counsel for the appellant, Mrs.R.Hemalatha, learned counsel for the first respondent and Mr.S.Murugappan, learned counsel appearing for the second respondent.

4. The appeals are of the year 2007 and we find that the order of direction issued by the Tribunal impugned before us has been given effect to and the Department had issued Show Cause Notices to both the companies dated 24.07.2007.

5. Mr.S.Murugappan, learned counsel for the second respondent, submitted that one of the assessee, namely M/s.Sree Aravind Steels Ltd., has sought for certain documents from the department to enable them to submit their objections to the Show Cause Notices. It is not clear as to what had been done by the other company, namely M/s.Arudra Steels.

6. Due to efflux of time, we are of the view that it may not be necessary to adjudicate these appeals and decide the substantial question of law as the department has availed the opportunity granted by the Tribunal in the impugned order and issued Show Cause Notices afresh, which are slightly different from the Show Cause Notices, which have ultimately culminated into the impugned order. Therefore, the best course open would be is to direct the Commissioner of Central Excise, Tiruchirapalli, to adjudicate the Show Cause Notices after affording reasonable opportunity to the assessee and take a decision in the matter. Since we are inclined to issue such a direction, the necessity to answer the substantial question of law does not arise in these appeals and therefore, we are inclined to leave the same open for consideration as and when need arises.

7. In the result, the appeals are disposed of, by directing the Commissioner of Central Excise, Tiruchirapalli to proceed further with adjudicating the Show Cause Notice dated 24.07.2007, after affording reasonable opportunity to the assessees, which includes an opportunity of personal hearing and thereafter take a decision on merits and in accordance with law and the substantial question of law framed is left open. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Commissioner of Central Excise,
Central Excise Commissionerate,
No.1, Williams Road,
Tiruchirapalli - 620 001.

2. Cutsoms, Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annex,
No.26, Haddows Road,
Chennai - 600 006.

+2cc to M/s.R.Hemalatha, Advocate Sr.663
+1cc to M/s.S.Murugappan, Advocate Sr.481

C.M.A Nos.3235 to 3238 of 2007
and
M.P.Nos.1 of 2007

ssv[co]
srg 19/02/2021