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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23554 of 2013

and

M.P.No.1 of 2013

Sri Sivasakthi Auto Ancillaries Pvt Ltd.,
Rep.by its Director - Mr.D.Ganeshan,
No.50/1, Gangaianman Koil Street,
Karapakkam Village,
Chennai - 600 097.

...Petitioner

Vs

1. The Commissioner of Central Excise,
Chennai - IV Commissionerate,
5th Floor, MHU Complex,
692, Anna Salai, Nandanam,
Chennai - 600 035.
2. The Deputy Commissioner of Central Excise,
Perungudi Division,
4th Floor, EVR Periyar Building,
690, Anna Salai, Nandanam,
Chennai - 600 035.
3. The Superintendent of Central Excise,
Perungudi III Range,
4th Floor, EVR Periyar Building,
690, Anna Salai,
Nandanam,
Chennai - 600035.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, to call for the Order C.No.IV/II/13/2013 dated 29.07.2013 of the 2nd respondent and Orders O.C.No.341/2013 dated 01.08.2013, O.C.No.343/2013 dated 02.08.2013 of the 3rd respondent and quash the same.



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For Petitioner : Mr.S.M.Deenadayalan
For Respondents : M/s.M.Sheela
Senior Standing counsel
GST & Customs
Assisted by M/s.Prarthana.M
and M/s.Aswini.G

O R D E R

The Demand notices issued by the 2nd respondent are under challenge in the present writ petition.

2. The Constitutional validity of Rule 8(3A) of the Central Excise Rules, 2002 was challenged before the High Court of Gujarat and the High Court of Gujarat declared the said rule as unconstitutional. The matter was taken by way of an S.L.P before the Hon'ble Apex Court of India and an interim stay of the judgment was granted and the appeals are pending. As far as the petitioner is concerned, earlier the petitioner filed W.P.No.11204 of 2015, challenging the demand to pay customs duty by the respondents and this Court passed an order on 15.09.2015, remitting the matter back to the authority. The contention of the respondents is that there is no impediment for the Department to recover the dues payable as the Hon'ble Supreme Court of India stayed the judgment of the Gujarat High Court.

3. This apart, the order passed in the case of the petitioner in W.P.No.11204 of 2015 was taken by way of writ appeal in W.A.No.802 of 2017 and the Hon'ble Division Bench of this Court granted an interim stay in C.M.P.No.11102 of 2017 on 25.07.2017. Therefore, the learned counsel for the respondents reiterated that there is no bar for recovery in the dues from the petitioner.

4. However, the learned counsel for the petitioner states that the writ appeal is sub judice. As far as the present writ petition is concerned, the demand notices are challenged. The earlier writ petition filed by the writ petitioner with reference to the same issue is now pending before the Hon'ble Division Bench of this Court for adjudication. Therefore, the issues regarding the liability or otherwise is to be determined and therefore, this Court is of the considered opinion that the grounds raised in this writ petition are the grounds, which all are raised in the writ appeal. Thus, the parties have to pursue the remedy before the Hon'ble Division Bench of this Court as the earlier writ petition filed by the writ petitioner is taken by way of an writ appeal and an interim stay is granted.



5. This being the factum, the writ petitioner is at liberty to raise all the grounds raised in this writ petition before the Hon'ble Division Bench in W.A.No.802 of 2017 as the issues are same.

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6. With this liberty, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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Chennai - 600035.

+1 CC to Mr.Deena Dayalan, Advocate, Sr.No. 40981.

+2 CC to M/s.M.Sheela, Advocate, Sr.No. 40894.

W.P.No.23554 of 2013

PCH(CO)
LS(07/09/2021)