



WEB COPY



C.M.A. Nos.1561, 1443 & 1600 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **MOHAMMED SHAFFIQ**

C.M.A. Nos.1561, 1443 and 1600 of 2016 and
C.M.P. Nos.11127, 11751 & 12070 of 2016

The Commissioner of Central Excise
Chennai III Commissionerate
Chennai - 600 034

.. Petitioner in all
CMAs

Vs.

1.Madras Elastomers Ltd.,
A-15 Industrial Complex
M.M.Nagar, Chennai - 603 209

.. 1st Respondent in C.M.A.
No.1561 of 2016

2.A.R.Metalurgicals Private Ltd.
61st Km, Bangalore - Krishnagiri Road
Nallaganakothapalli Village
Near Shoolagiri, Hosur - 635 117

.. 1st Respondent in C.M.A.
No.1443 of 2016

3.M/s.S.M.Pressings
Plot No.E-18, 5th Phase
SIDCO Industrial Estate
Hosur - 635 126

.. 1st Respondent in C.M.A.
No.1600 of 2016

4.The Customs, Excise & Service Tax
Appellate Tribunal
No.26, Shastri Bhawan Annex Buildings
Haddows Road, Chennai - 600 006

.. 2nd Respondent in all CMAs



C.M.A. Nos.1561, 1443 & 1600 of 2016

* * *

COMMON Prayer : Civil miscellaneous appeals filed under Section 35G of the Central Excise Act, 1944 against the Final Order No.40855, 40872 & 40867/2015 dated 07.07.2015 passed by CESTAT, Chennai and uphold Order-in-Original No.49/2008 dated 23.12.2008, Order-in-Original No.04/2014 dated 02.01.2014 and Order-in-Appeal No.39/2014 (M-III) dated 06.07.2011.

* * *

For Appellant in : Mr.A.P.Srinivas, Standing Counsel
all CMAs K.S.Ramaswamy, Jr. Counsel

For R1 : No Appearance

R1 : Tribunal

COMMON JUDGMENT

S.VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.

When these appeals have been taken up for hearing, both the parties submit that the issue in this case, is covered by the decision of this court dated 04.11.2022 made in C.M.A. No.424 of 2017 and that the matter is pending before the Hon'ble Apex Court and that depending upon the outcome of the issues, the parties can work out their remedy.



C.M.A. Nos.1561, 1443 & 1600 of 2016

WEB COPY

2. We have already disposed of C.M.A. Nos.1646 of 2016, 1261, 1262 & 1264 of 2018, in which one of us (Justice S.VAIDYANATHAN), is a party and the relevant paragraphs is extracted hereunder:

"4. Though the argument appears to be attractive, we have already remitted the cases back to the original authority in the above batch of cases in C.M.A.No.424 of 2017, the relevant portion of which reads as under :

*These appeals are taken up for final disposal and are disposed of in the light of the decision of **Gujarat High Court in Indsur Global Ltd. V. Union of India 2014 (310) ELT 833 (Guj.)** and subsequent development. The Gujarat High Court had held that Rule 8(3A) of the Central Excise Rules, 2002 was ultra vires the Act. This decision was followed by this Court in the case of **A.R. Metallurgicals P. Ltd V. CESTAT 2015 (322) ELT 49 (Mad.)**. However, decision of **Gujarat High Court in Indsur Global Ltd. V. Union of India 2014 (310) ELT 833 (Guj.)** has been stayed by the Hon-ble Apex Court as reported in **2016 (335) ELT A109 (SC)**. The relevant portion of the order of the Hon-ble Apex Court reads as hereunder:*

"There shall be interim stay of the impugned judgment and order passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 3344 of 2014 dated 27.11.2014. We restrain the petitioner(s) herein to recover a sum of Rs.87,00,000/- (Rupees eighty seven lakhs only) from the respondent till the disposal of the Special Leave Petition (C) C.C. No. 16523 of 2015."

2. Considering the above, we are inclined to set aside



WEB COPY



C.M.A. Nos.1561, 1443 & 1600 of 2016

the impugned order and remit the cases back to the original authority concerned to await for the final orders of the Hon-ble Supreme Court in Special Leave Petition (C) C.C. No. 16523 of 2015 [Union of India V.Indsur Global Ltd.].

3. In case, in C.M.A. No. 424 of 2017, the issues governed by the litigation policy of the Government, respondent is directed not to press for any payment.

4. The civil miscellaneous appeals and the writ appeal are disposed of accordingly. No costs. Connected C.M.Ps. are closed.

3. Giving liberty to the parties concerned, we are inclined to close the appeals in the light of the orders of this court extracted supra. Accordingly, these civil miscellaneous appeals are closed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

[S.V.N., J.] [M.S.Q., J.]
05.12.2022

Asr

Index : Yes/No



WEB COPY



C.M.A. Nos.1561, 1443 & 1600 of 2016

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.
Asr

C.M.A. Nos.1561, 1443 & 1600 of 2016

Dated : 05.12.2022