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WPA 11222 of 2017
With
CAN 1 of 2018(Old CAN 662 of 2018)

Manash Forgings Pvt. Ltd. & Anr.
Vs
The Commissioner of Central Excise Audit-Commissionerate & Ors.

Mr. Arijit Chakraborty,,
Mr. Prabir Bera,
Mr. Debsoumya Basak
Mr. Subhas Ch. Jana
... For the Petitioners.

Heard Mr. Chakraborty, learned Advocate appearing for the petitioners.

None appears for the respondents.

The subject matter of challenge in the instant writ petition is an impugned show-cause-cum-demand notice dated 6th December, 2016 being Annexure P-3 to the writ petition issued by the Deputy Commissioner of Central Excise (Audit), Circle-II/respondent No.2. It appears from record that the instant writ petition was initially moved on 8th of May, 2017 when liberty was granted to the petitioners to give reply to the impugned show-cause-notice and directing the respondent authority concerned to decide on the impugned show-cause-notice after considering the reply by the petitioners against the said show-cause-notice. During the pendency of this writ petition, the respondent concerned has passed the final order on the aforesaid impugned show-cause-notice on 31st October, 2017 which has been challenged by the petitioners by filing an application being CAN 662 of 2018. It is the case of the petitioners that the aforesaid impugned order dated 31st October, 2017, passed on the impugned show-cause-notice is bad in law and is in total disregard of law laid down by the Hon'ble Supreme Court in the case of Commissioner of Cus. & C. EX., Nagpur vs. Ispat Industries Ltd. reported in 2015(324) E.L.T. 670 (S.C.) and petitioners particularly rely on paragraph 19 of the said judgment in support of its contention that the issue in question is no more res integra that freight charges are not includible in the assessable value. In addition to the aforesaid decision of the Hon'ble Supreme Court, petitioners have relied on several other decisions in its reply to the impugned show-cause-notice, which appears from paragraph 10 of the said reply. It appears on perusal of the aforesaid impugned order dated 31st October, 2017, that none of the aforesaid decisions referred in paragraph 10 of the reply filed by the petitioners against the impugned show-cause-notice has either been referred or considered in his order passed by the respondent No.3 on 31st October, 2017.

Paragraph 19 of the judgment of the Hon'ble Supreme Court in the case of Ispat Industries (supra) is relevant to this case according to me and which is quoted hereunder :

"19. A cursory reading of the substituted provision makes it clear that the concept of "normal value" has given way to the concept of "transaction value". Thus, no longer is there a normative price for purposes of valuation of excisable goods. The actual price that is paid or payable on each removal of goods becomes the transaction value. Interestingly, it will be noticed that under Section 4(3), the place of removal is defined as it had been defined in the substituted Section 4(by the 1973 Amendment) before its further amendment in 1996. What is conspicuous by its absence in the present Section is Section 4(2) and sub-section (b)(iii) in the previous Section 4(after its amendment in 1996). It is clear therefore, that for the second period in question in the present case, namely, 1.7.2000 to 31.3.2003, the depot, premises of a consignment agent or any other place from which excisable goods are to be sold after their clearance from the factory are no longer places of removal. Also, the definition of "transaction value" makes it clear that freight or transportation expenses are not included in calculating the excise duty payable."

Considering the facts and circumstances of the case and submission of the petitioners this writ petition being WPA 11222 of 2017 and CAN 1 of 2018(Old CAN 662 of 2018) are disposed of by setting aside the impugned order dated 31st October, 2017, and the matter is remanded back to the respondent No.3/authority concerned to reconsider the case of the petitioners and pass a fresh speaking and reasoned order in accordance with law after giving an opportunity of hearing to the petitioners or its authorised representative and particularly taking into consideration the judgments referred to by the petitioners in paragraph 10 of its reply dated 25th May, 2017 against the impugned show-cause-notice, within a period of eight weeks from the date of communication of this order.

Learned Advocate-on-record of the petitioners shall communicate this order to the respondent authority concerned.

(Md. Nizamuddin, J.)