IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.13129 of 2015

M/s. Sri Sivasakthi Auto Ancillaries Madras Pvt. Ltd.
Rep. By its Director – D.Ganeshan
No.50/1, Gangaiamman Koil Street
Karapakkam Village, Chennai – 600 097. .. Petitioner

Vs.

1. Union of India
   Rep. By the Secretary to Government
   Department of Revenue
   North Block, New Delhi – 110 001.

2. The Deputy Commissioner of Central Excise
   Perungudi Division, 4th Floor, EVR Periyar Building
   690, Anna Salai, Nandanam
   Chennai – 600 035.

3. The Commissioner of Central Excise
   Chennai – IV Commissionerate
   5th Floor, MHU Complex
   692, Anna Salai, Nandanam
   Chennai – 600 035. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a writ of declaration, declaring the provisions under 8(3A) of the Central Excise Rules, 2002, introduced vide Notification No.4/2002-C.E (N.T) dated 01.03.2002, modified vide Notification No.17/2005-C.E (N.T) dated 31.03.2005 and substituted vide

Notification No.13/2006 C.E (N.T) dated 01.06.2006 and Rule 8(4) of the Central Excise Rules, 2002, introduced vide Notification No.12/2003 C.E.(N.T) dated 01.03.2003 as ultra vires of the Constitution of India, void ab initio, illegal and unconstitutional and consequently forbear the second respondent from taking action against the petitioner vide C.No.IV/11/13/2013 dated 13.01.2015 issued under Rule 8(3A) of the Central Excise Rules, 2002.

For the Petitioner : Mr.S.Santhosh
for Mr.S.Sivaramakrishnan

For the Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

(Order of the Court was made by C. SARAVANAN, J.)

In this writ petition, the petitioner has challenged the vires of Rule 8(4) of the Central Excise Rules, 2002, as inserted vide Notification No.4/2002-C.E (N.T) dated 01.03.2002 and consequently substituted vide Notification No.12/2003 C.E.(N.T) dated 01.03.2003 .

2. The substituted Rule 8(4) of the Central Excise Rules, 2002, reads as under:-

> *"(4) The provisions of Section 11 of the Act shall be applicable for recovery of the duty as assessed under Rule 6 and the interest under sub-Rule (3) in the same manner as they are applicable for recovery of any duty or other sums payable to the Central Government."*

3. Reading of the above provision indicates that it is a generic provision, which not only applies to the duty assessed under Rule 6, but also the interest under sub-Rule (3), as also sub-Rule (3A) by virtue of the subsequent amendment to the aforesaid Rule.

4. This Court has declared Rule 8(3A) of the Central Excise Rules, 2002, as *ultra vires* in the case of ***Malladi Drugs & Pharmaceuticals Ltd. vs. Union of India***[1]. Since the provision under challenge is a generic provision, applicable to all the provisions mentioned above, it cannot be declared as *ultra vires* Section 37 of the Central Excise Act, 1944.

5. Consequently, we find no merits in the challenge to the impugned Rule 8(4) of the Central Excise Rules, 2002. Accordingly, the writ petition stands dismissed. There shall be no order as to costs. Consequently, W.M.P.No.1 of 2015 is closed.

(R.S.K., J.) (C.S.N, J)
20.11.2024

Neutral Citation:Yes/No

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1 *2015 (323) E.L.T. 489 (Mad.)*

To:

1. The Secretary to Government
   Union of India
   Department of Revenue
   North Block, New Delhi – 110 001.

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R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

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