IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17071 of 2024
and
W.M.P.Nos.18818 & 18820 of 2024

M/s. A.R. Metallurgicals Pvt.Ltd.,
Rep. by its Director: Mr. Perveez Rahim Khan ... Petitioner

Versus

1.The Commissioner of GST & Central Excise,
Salem Commissionerate, Salem.

2.Deputy Commissioner,
Office of the Deputy Commissioner of GST & Central Excise,
Hosur I Division, Hosur. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Mandamus, to restrain the respondents from demanding any amount relating to the period 1- 4- 2011 to 3.10.2013 from the petitioner which does not survive but abate in view of ultravires of Rule 8 (3A) of the Central Excise Rules as declared by this Honble High Court on 27.03.2015 and the said issue its still pending before the Honble Apex Court.

For Petitioner : Mr. M.A. Mudimannan

For Respondent : Mr. T. Ramesh Kutty,
Senior Standing Counsel

ORDER

Pursuant to four orders in original, a recovery notice dated 10.02.2016 was issued. Such notice is challenged in this writ petition.

2. Learned counsel for the petitioner submits that the liability under the orders in original referred to in the impugned notice arose out of the application of Rule 8(3A) of the Central Excise Rules, 2002. He submits that the constitutional validity of the said rule was challenged in a batch of writ petitions, wherein the lead case was W.P.No.2506 of 2011. Learned counsel points out that the petitioner was one of the petitioners in the batch of writ petitions. He also points out that the relevant portion of Rule 8(3A) was struck down by the Division Bench of this Court in the above mentioned batch of cases. When the Central Excise Department carried the matter in appeal before the Hon'ble Supreme Court, he submits that an interim stay of the judgment of the Division Bench was granted but the Central Excise authorities were restrained from recovering amounts demanded from the respondents therein. Learned counsel further submits that an appeal was filed before the CESTAT against the order in original No.07/2023 dated 23.01.2013. Therefore, he submits that the interference with the impugned notice is called for.

3. Mr. T. Ramesh Kutty, learned senior standing counsel, who appears on behalf of the respondents, submits that the impugned notice is dated 10.02.2016. On account of lathes, he submits that the writ petition is liable to be dismissed. He also submits that the recovery notice was issued pursuant to orders in original, which were issued before the judgment of the Division Bench. In view of the interim order of the Supreme Court, he submits that no recovery measures have been initiated pursuant to the impugned notice.

4. The impugned notice is dated 10.02.2016 and the petitioner approached this Court after about 8 years. Except for order in original No.07/2013 dated 23.01.2013, there is no evidence of other orders in original being appealed against. Even assuming that the only basis for imposing liability on the petitioner in all the orders in original referred to in the impugned demand notice was Rule 8(3A) of the Central Excise Rules, the matter has not attained finality because an interim stay of the judgment of the Division Bench is in operation as on date. By such interim order, the Central Excise authorities were restrained from making recovery by relying

on Rule 8(3A). Learned senior standing counsel also submits that in view of the said order, no recovery measures were initiated pursuant to the impugned notice. In these circumstances, no case is made out to interfere with the impugned notice.

5. With these observations, W.P.No.17071 of 2024 is disposed of without any order as to costs. Consequently, connected miscellaneous petitions are also closed.

23.07.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No

klt

To

1.The Commissioner of GST & Central Excise,
Salem Commissionerate, Salem.

2.Deputy Commissioner,
Office of the Deputy Commissioner of GST & Central Excise,
Hosur I Division, Hosur.

SENTHILKUMAR RAMAMOORTHY,J.

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