(2016) 08 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No. 10754 of 2005

Commissioner of Central Excise — APPELLANT

Vs

Thyssenkrupp JBM (P) Ltd. — RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Citation : (2016) 341 ELT 53

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Thiru. Rabu Manohar and Ms. R. Hemalatha, Advocates, for the Petitioner; Shri G. Vijayabalan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J. - Heard Thiru. Rabu Manohar Ms. R. Hemalatha, learned counsel for the petitioner and Thiru. G. Vijayabalan for the 1st respondent.

2. This Writ Petition has been filed by the Commissioner of Central Excise, challenging the order passed by the second respondent viz., Customs and Central Excise, Settlement Commission.

3. The first respondent herein filed an application before the Settlement Commission stating that they have manufactured and cleared passenger car parts falling under Chapter Heading 8708 of the Schedule to Central Excise Tariff Act, 1985, to Ford India Ltd. from 1-6-1999 to 15-7-2000, without including ammortised tool cost in the assessable value, thereby undervaluing the said car parts and evading central excise duty of Rs. 79,09,483/- which was proposed to be demanded vide show cause notice 17-6-2003. The allegation against the first respondent was that by the said move, they have evaded payment of Central Excise Duty of Rs. 79,09,483/- which was proposed to be demanded vide show cause notice dated 17-6-2003.

4. Apart from it, there was also a proposal to demand duty under proviso to Section 11A(1) of the CEA, and proposal to impose penalty under Section 11AC

of the Central Excise Act and Rule 173Q of CER, 1944.

5. The contention raised by the first respondent was that the tooling agreement with M/s. Ford India was concluded and signed only on 13-7-2000. On being pointed out, they remitted the entire amount, by debiting RG23A Part II on 14-7-2000 and 20-7-2000 and they stated that they are willing for appropriation of the amount already paid towards duty demanded in the show cause notice. The first respondent vide their letter dated 11-10-2003 accepted the entire duty liability and also agreed for appropriation of duty debited on 14-7-2000 and 20-7-2000 towards the accepted duty liability. The application was resisted by the Commissioner by reiterating the facts mentioned in the show cause notice.

6. The Settlement Commission after examining the facts and considering the submissions on both sides, recorded a factual finding that the explanation of the first respondent that the tooling agreement with M/s. Ford India was completed only on 13-7-2000 and that they paid the duty involved immediately thereafter on 14-7-2000 and 20-7-2000, indicated the reason why they could not pay the duty earlier. Furthermore, the Settlement Commission noted that there are no other mala fides. Thus, on facts, the Settlement Commission has taken a decision on the first respondent''s application, wherein the first respondent has accepted the entire duty liability and also noted the fact that after the first respondent agreed for the appropriation, only after a period of about three years, show cause notice was issued. Thus, in the light of the factual finding recorded by the Commission, this Court exercising jurisdiction under Article 226 of the Constitution of India, will not act as if it is a Second Appellate Authority over the orders passed by the Commission, in the absence of an perversity in the order.

7. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, W.P. M.P. No. 11681 of 2005 is also dismissed.