courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 01/09/2026

(2014) 11 MAD CK 0066

In the Madras High Court

Case No : W.P. No. 16185 of 2008 and M.P. No. 1 of 2008

Kamachi Steels Ltd. APPELLANT

Vs

Commissioner of C. Ex., Chennai-II RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2015) 317 ELT 444

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

Bench : Single Bench

Advocate : K. Jayachandran, Advocates for the Appellant; E. Vijay Anand, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J.—With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal. In this Writ Petition the petitioner seeks for quashing the impugned notice dated 7-5-2008 issued by the respondent, by which the respondent has called upon the petitioner to submit their reply as to why the Cenvat credit availed by the petitioner should not be demanded and recovered and why penalty should not be imposed and interest should not be collected.

2. Heard the learned counsel appearing on either side and perused the materials placed on record.

3. The petitioner was issued with show cause notice dated 5-10-2006, alleging that the petitioner has violated the Rule 3(5) of the Cenvat Credit Rules, 2004. The petitioner submitted his reply and the Joint Commissioner for Central Excise adjudicated the matter and the order No. 03/2007, dated 10-1-2007 was passed forming part of the show cause notice. As against which the petitioner preferred Appeal before the Commissioner of Central Excise (Appeals), which is pending. In the meantime, the petitioner approached the Customs and Central Excise settlement Commission, Chennai, by stating that in the Order-in-Original the duty demanded was Rs. 7,32,445/- out of which the petitioner had already paid

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamachi-steels-ltd-appellant-hash-...

Rs. 6,73,452/- and therefore before the issuance of the show cause notice the balance amount of Rs. 58,994/- was paid. The petitioner requested for immunity from interest, penalty and prosecution under the Central Excise Act and IPC.

4. On 21-5-2007, before the Settlement Commission, the petitioner was represented by an Advocate and the Department was represented by The Assistant Commissioner and the Superintendent, Chennai v. Division. After considering the entire matter as well as the duty liability made by the petitioner, the Settlement Commissioner observed that the petitioner has fulfilled the necessary conditions required for admission of the case and the entire duty liability has been discharged, the case was admitted and finally settled. Since this is a case of willful evasion of Central Excise Duty, full immunity from payment of interest was not granted and the petitioner was directed pay a simple interest at 10% per annum for the period when the duty became duty till the date of actual payment. Accordingly, the Settlement Commission allowed the petitioner''s case and passed final orders on 22-5-2007.

5. After about two years, when an inspection was conducted in the petitioner''s premises, the authorities while going through the documents stated that the petitioner has availed Cenvat Credit with ineligible documents. Therefore a show cause notice was issued. This show cause notice is the subject matter of challenge in this Writ Petition.

6. On a perusal of the show cause notice it is seen that there is no clear finding, but the authority would state that it appears that the petitioner availed the credit on the basis of ineligible documents. The explanation of the petitioner was that subsequently the Bills of Entries were lost and therefore they lodged Police complaint and thereafter the copies were re-done, as the duly certified by the authorities have not been traceable. This explanation said to have been given by the petitioner appears to have not been considered by the respondent and issued the present show cause notice.

7. In my view, after the case has already been settled by the Settlement Commission, the question of re-opening the same does not arise, unless and until it is established that fraud has been committed. It is not the case of the respondent Department that fraud has been committed nor the Department approached the Settlement Commission in this regard. In the light of the above, the Writ Petition is allowed and the impugned show cause notice dated 7-5-2008, is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kamachi-steels-ltd-appellant-hash-…