

**(2013) 02 MAD CK 0201**

**Madras High Court**

**Case No:** W.P. Nos. 4753-4755 of 2013 and M.P. Nos. 1-3 of 2013

SLD Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** Feb. 27, 2013

**Citation:** (2014) 301 ELT 174

**Hon'ble Judges:** V. Dhanapalan, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent of the learned counsel appearing for the parties, these Writ Petitions are taken up for disposal at the admission stage itself. Mr. E. Vijay Anand, learned Central Government Standing Counsel takes notice for the respondents. Heard Mr. Jayesh B. Dolia, learned counsel appearing for M/s. Aiyar and Dolia, for the petitioner and Mr. E. Vijay Anand, learned CGSC appearing for the respondents.

2. In all these three Writ Petitions, the petitioner-company calls in question, Circular No. 967/01/2013-CX, dated 1-1-2013 on the file of the second respondent, seeking to quash the same to the extent questioned herein and consequently to forbear the third respondent from initiating any coercive action for recovery of the disputed tax, interest and penalty, pursuant to the orders in Order-in-Original No. 16/2011, dated 29-9-2011, Order-in-Original No. 22/2010, dated 20-9-2010 and Order-in-Original No. 17/2010, dated 30-3-2010, which are respectively the subject matter of Appeals in Appeal No. E/2/2012, Appeal No. E/5/2011 and Appeal No. E/50/2010, filed by the petitioner before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

3. The petitioner-company is incorporated under the provisions of the Companies Act, 1956 and is manufacturer of MS Ingots, MS Angles, Channels and flats falling under the Central Excise Tariff Act. The petitioner-company has been availing Cenvat

credit on input, input services and capital goods credit as provided for under Cenvat Credit Rules, 2004 and have been paying appropriate Central Excise Duty on their clearances. The petitioner-company has undertaken such manufacturing activity on job work basis for M/s. Larson and Tourbo Limited, wherein, they would send billets to the petitioner under the cover of challans, etc., and the petitioner would be converting the same into angles, channels, etc., and return the same to M/s. Larson and Tourbo Limited, without payment of duty. The Department conducted verification of the transactions and observed that during August, 2008 and September, 2008, such job work clearances have taken place in the ER-1 Return filed for the month of August, 2008, the quantity of such job work has been shown as clearance without payment of duty and in the ER-1 Return for the month of September 2008, Notification No. 214/86 has been mentioned for such clearances. After the Department's verification and observation that the raw material supplier, M/s. Larson and Tourbo has not filed the requisite declaration with the Departmental authorities having jurisdiction over the petitioner-company, the petitioner informed its Range Officer that they have been doing the conversion activity for M/s. Larson and Tourbo Limited from August, 2008.

4. While so, the following show cause notices were issued to the petitioner-company on the respective dates:

(a) Show cause notice, dated 1-10-2010 was issued on the premise that the petitioner-company wrongly availed Cenvat credit on the basis of ineligible documents in contravention of Rules 9(1) and (2) of Cenvat Credit Rules and is not entitled for the benefit of exemption in the absence of declaration of M/s. Larson and Toubro in terms of Notification No. 214/86 and the petitioner was called upon to show cause as to why the ineligible Cenvat credit of countervailing duty, additional duty, Cenvat duty, Education Cess, etc., totalling a sum of Rs. 53,88,235/- be not levied on the petitioner, together with appropriate interest.

(b) Show cause notice, dated 1-9-2009 was issued to the petitioner-company on the premise that they are not entitled for the benefit of exemption in the absence of declaration of M/s. Larson and Toubro Ltd., in terms of Notification No. 214/86 and the petitioner was called upon to show cause as to why a sum of Rs. 58,01,903/- be not levied on the petitioner by way of duty demand for the period August and September 2008, apart from demand of interest and imposition of penalty.

(c) Show cause notice, dated 15-1-2009 was issued to the petitioner-company on the premise that during scrutiny of excise invoices raised under Rule 11 of Central Excise Rules, 2002, for the period from May, 2005 to December, 2007, it was found that the petitioner is removing the excisable goods, viz., MS Ignots for conversion into CTD bars to M/s. Shri Mahalakshmi Metal & Scrap Processing (P) Ltd., and the petitioner has not adopted the appropriate assessable value as envisaged under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2009, which resulted in short-payment of duty.

5. After due process of law, the third respondent-Commissioner of Central Excise, Chennai-II, passed the following orders:

(i) Order-in-Original No. 16/2011, dated 29-9-2011, dropping the demand pertaining to one invoice to the tune of Rs. 4,85,378/- and confirmed the demand to the tune of Rs. 49,02,857/- in respect of 12 Bills of Entries, along with appropriate interest and also imposed an equal amount of penalty under Rule 15(2) of the Cenvat Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1944.

(ii) Order-in-Original No. 22/2010, dated 20-9-2010, confirming the demand of excise duty to the tune of Rs. 58,01,903/- along with appropriate interest and also imposed a penalty of Rs. 1 lakh under Rule 25 of the Central Excise Rules, 2002 on the petitioner-company.

(iii) Order-in-Original No. 17/2010, dated 30-3-2010, demanding a sum of Rs. 7,50,206/- towards Central Excise Duty and imposed penalty of Rs. 7,50,206/- and also demanded interest u/s 11AB of the Central Excise Act, 1944.

6. Challenging the abovesaid orders passed in Orders-in-Original, respective appeals along with stay petitions, were filed by the petitioner in Appeal No. E/2/2012, Appeal No. E/5/2011 and Appeal No. E/50/2010, before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

7. It is the further case of the petitioner that the second respondent issued Circular bearing No. 967/01/2013-CX, dated 1-1-2013 with regard to recovery of demand during the pendency of stay petition filed along with appeal. In respect of the appeal filed with stay petition against the Order-in-Original, a direction has been issued in the said Circular to the effect that the recovery has to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any specified, whichever is earlier. In view of the impugned Circular, dated 1-1-2013 issued by the second respondent, the petitioner-company apprehends that the third respondent may initiate coercive proceedings and disturb the petitioner-company's working, which would cause irreparable loss and damage to the petitioner. Hence, the present Writ Petitions are filed.

8. On the above background of pleadings, Mr. Jayesh B. Dolia, learned counsel appearing for the petitioner submitted that pending appeals, it is obligatory on the part of the Appellate Tribunal to take up the stay petitions and dispose of the same; since, in the meantime, the impugned Circular, dated 1-1-2013 was issued and the stay petitions are not yet disposed of by the Appellate Tribunal, the petitioner has no other remedy except to invoke the jurisdiction of this Court under Article 226 of the Constitution of India by filing these Writ Petitions.

9. On the other hand, Mr. E. Vijay Anand, learned Central Government Standing Counsel appearing for the respondents submitted that in the normal course, the

petitioner has to adjudicate the stay petitions only along with the appeals; on the other hand, the petitioner has taken a recourse to approach this Court without any cause and therefore, the Writ Petitions are not maintainable.

10. I have heard the learned counsel appearing for the parties and perused the material documents available on record.

11. It is seen that the petitioner-company is incorporated under the provisions of the Companies Act, 1956 and is manufacturer of MS Ingots, MS Angles, Channels and flats falling under the Central Excise Tariff Act. The petitioner-company has undertaken such manufacturing activity on job work basis for M/s. Larson and Tourbo Limited, wherein, they would send billets to the petitioner under the cover of challans and the petitioner would be converting the same into angles, channels, etc., and return the same to M/s. Larson and Tourbo Limited, without payment of duty. The petitioner-company has also been availing Cenvat credit on input, input services and capital goods credit as provided for under Cenvat Credit Rules, 2004 and have been paying appropriate Central Excise Duty on their clearances. The Department conducted verification of the transactions and issued respective show cause notices. Ultimately, the original authority took up the matter and initiated action and thereafter, orders in Orders-in-Original were passed imposing tax, interest, penalty, etc., as against which, the petitioner preferred respective appeals along with stay petitions, before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai. The Appellate Tribunal has not taken up the stay petitions. In the meanwhile, the petitioner apprehends that recovery proceedings may be initiated against the petitioner, as the impugned Circular, dated 1-1-2013 has been issued, giving direction for recovery and therefore, the petitioner has moved this Court.

12. Though the petitioner has approached this Court challenging the assessment made by the authorities for payment of tax, interest, penalty, etc., it is seen that the petitioner has already approached the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, by filing appeals against the respective Orders-in-Original passed by the third respondent. Along with the said appeals, stay petitions have also been filed before the Appellate Tribunal, and since no orders are passed in the stay petitions and as the petitioner apprehends initiation of recovery proceedings, it is appropriate for this Court to direct the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, to take up the stay petitions. Accordingly, these Writ Petitions are disposed of, with a direction to the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, to take up the stay petitions which are filed along with the appeals and dispose of the stay petitions, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Till such time the order is passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in the said stay petitions, there shall be an order of status quo as on today, to be

maintained by the parties. No costs. The Miscellaneous Petitions are closed.