

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.01.2006

CORAM

THE HON'BLE MR.JUSTICE K.MOHAN RAM

Writ Petition No.1749 OF 2006
AND
W.P.M.P.No.2015 of 2006

M/s.Omega Cables Ltd.,
16-17, Industrial Estate
Ambattur, Chennai-600 058
rep. by its General Manager
Vijendra Samuel

.. Petitioner

vs.

1. The Deputy Commissioner
Chennai II Division, Chennai II Commissionerate
R-40, A-1, 100 Feet Road, Mogapair East
Chennai-600 037
2. The Commissioner of Central Excise
No.473, M.H.U.Complex
Anna Salai, Nandanam
Chennai-600 035
3. The Customs, Excise, and Service Tax
Appellate Tribunal
South Zonal Bench, Shastri Bhavan Annex
Haddows Road, Chennai-600 006

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Mandamus forbearing the first respondent from collecting the recovery of arrears, Central Excise Duty, vide communication dated 24.11.2005 in C.No.IV/16/109/05 by the Deputy Commissioner of Central Excise dated 24.11.2005 confirmed vide order of the Customs Excise and Service Tax Appellate Tribunal (South Zonal Bench) in final order No.825/05 dated 9.6.2005.

For petitioner : Mr.B.Sathish Sundar

O R D E R

The above writ petition has been filed to issue a writ of Mandamus forbearing the first respondent from collecting the recovery of arrears, Central Excise Duty, vide communication dated 24.11.2005 in C.No.IV/16/109/05 by the Deputy Commissioner of Central Excise dated 24.11.2005 confirmed vide order of the Customs Excise and Service Tax Appellate Tribunal (South Zonal Bench) in final order No.825/05 dated 9.6.2005.

2. Admittedly, the Customs, Excise, and Service Tax Appellate Tribunal, Chennai in final order No.825 of 2005 dated 9.6.2005, allowed the appeal filed by the Commissioner of Central Excise, Chennai against the order in Appeal No.78 of 1998 (M-II) dated 13.3.1998 passed by the Commissioner of Central Excise (Appeals Chennai). Pursuant to the order passed by the Customs, Excise, and Service Tax Appellate Tribunal, Chennai, the first respondent has raised a demand on the petitioner herein. Against that demand, the above writ petition has been filed.

3. It is the case of the petitioner that the order passed by the Tribunal is an ex-parte order and the petitioner was unaware of the order passed by the Tribunal as the copy of the order was not served on the petitioner and it was only known when the petitioner received a demand notice dated 31.10.2005. The main contention of the petitioner is that since the application filed by the petitioner to set aside the order passed by the Tribunal is pending before the Tribunal, the first respondent should not have issued the demand notice. Such a contention is untenable. There is an order fixing the liability on the petitioner to pay the duty and when there is admittedly no stay against that order, the first respondent is entitled to make a demand for payment of the duty. Such a demand is perfectly legal and the first respondent cannot be restrained from making the demand. The petitioner has not made out a case for issuing the writ.

Accordingly, the writ petition is dismissed. Connected W.P.M.P.No.2015 of 2006 is closed.
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Sd/
Asst.Registrar

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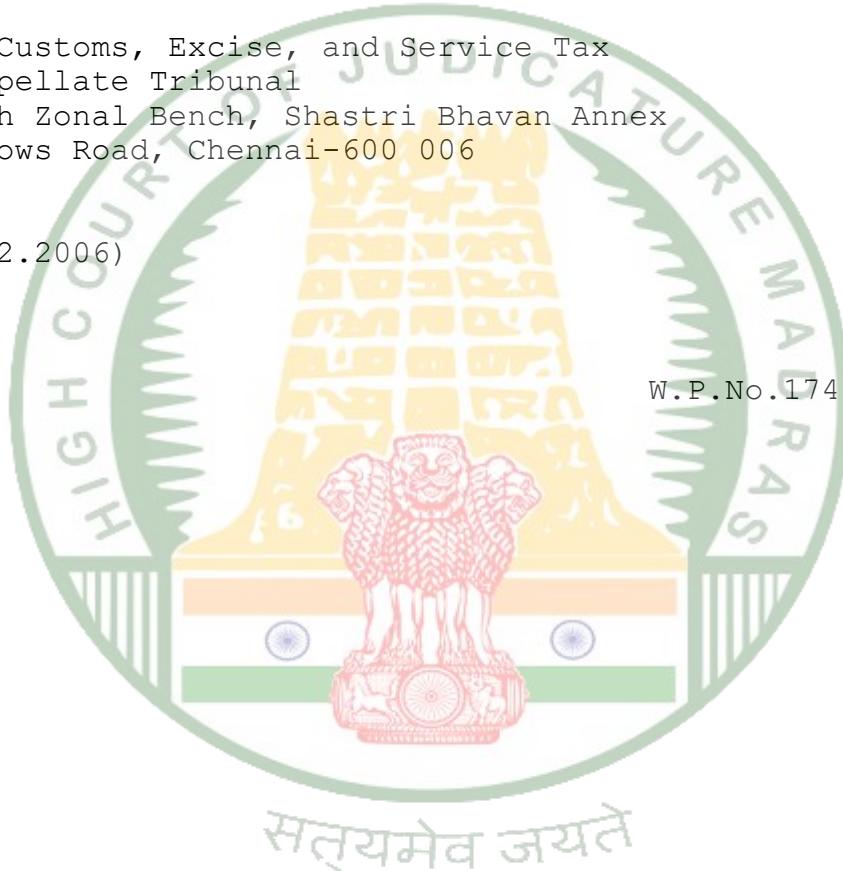
Sub Asst.Registrar

To

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SGL (CO)
NM (07.02.2006)

W.P.No.1749 OF 2006



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