

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
**श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष**  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.Nos.1569 to 1573/Chny/2018

(निर्धारण वर्ष / Assessment Years: 2007-08 to 2011-12)

The ACIT, Circle – 2, Salem	Vs	Sri Krishna Smelters P. Ltd., 77-B, Old Edappady Road, Sankari, Salem – 637 301.
		PAN: AADCS1855P
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकर अपील सं./I.T.A.Nos.1396 to 1401/Chny/2018

(निर्धारण वर्ष / Assessment Years: 2007-08 to 2012-13)

Sri Krishna Smelters P. Ltd., 77-B, Old Edappady Road, Sankari, Salem – 637 301.	Vs	The DCIT, Circle – 2, Salem
PAN: AADCS1855P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri AR.V. Sreenivasan, JCIT
राजस्व की ओर से /Revenue by	:	Shri R. Duraisamy, Managing Director

सुनवाई की तारीख /Date of hearing	:	27.06.2019
घोषणा की तारीख /Date of Pronouncement	:	18.07.2019

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the Revenue and assessee filed appeals for the assessment years 2007-08 to 2011-12. The assessee also filed appeal for the assessment year 2012-13. Since common issue arises

for consideration in all the appeals, we heard the same together and disposing off the same by this common order.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative submitted that the Assessing Officer received information from the Commissioner of Customs, Central Excise & Service Tax, Salem for suppressing the production. On the basis of the information, the assessment was re-opened by issue of notice U/s.148 of the Act. The assessee requested the Assessing Officer to treat the return originally filed as one filed in response to notice U/s.148 of the Act. Accordingly the Ld. DR for the assessment year 2006-07, the assessee company suppressed the production to the extent of 10166.455 MT of M.S. Ingots. The Ld.DR further submitted that the assessee claimed all the expenditure except electricity bill. The assessee could not produce any material to contradict the findings of the revenue authority. The Ld.DR further submitted that the first Appellate Authority under the Customs Act confirmed the suppressed production. The assessee also filed an appeal before the Customs, Central Excise and Service Tax Appellate Tribunal. The appeal filed before the Tribunal was also dismissed. The Ld.DR further submitted that the actual consumption of electricity was supported by suppressed production by the

assessee company. Therefore the CIT(A) is not justified in allowing the claim of the assessee.

3. We heard Shri R. Duraisamy, Managing Director of the assessee company also. According to the Managing Director of the assessee company, the bills and vouchers were seized by the Customs, Central Excise & Service Tax authorities. Therefore the same could not be produced before the Assessing Officer. On a query from the Bench, whether he could be able to produce those records including bills and vouchers after getting the certified copies from the Customs, Central Excise & Service Tax authorities, the Managing Director of the assessee company submitted that he could produce before the Assessing Officer. On a query from the Bench, the information with regard to lorry registration number by which the M.S. Ingots were said to be transported was found to be two wheelers and not the lorries, he clarified that the information said to be obtained from regional transport authorities is not correct. The assessee company has filed the correct registration number of the lorries which was used for the transport of M.S. Ingots. The Managing Director of the assessee company submitted that the matter may be remitted back to the file of the Assessing Officer for reconsideration.

4. We have considered the rival submissions on either side and perused the material available on record. On the basis of information said to be received from Customs, Central Excise authorities, the Assessing Officer found that there was suppressed production by the assessee company. The Assessing Officer found that the consumption of electricity for manufacturing of mild steel ingots was considerably very high, therefore the assessee suppressed the production. This Tribunal is of the considered opinion that consumption of electricity would depend upon various factors such as maintenance of machinery, etc. Therefore consumption of electricity alone cannot be a factor to decide whether the assessee has concealed the production. However the information said to be furnished by the Central Excise and Customs Authorities has to be taken into account along with the other material available on record. From the orders of both the authorities below, it appears that the assessee could not file the bills and vouchers to support the purchase of iron scraps. The claim of the assessee before the lower authorities was the bills, vouchers and other documents were seized by the Central Excise and Customs Authorities. Now the assessee submitted before this Tribunal that the said bills, vouchers and other account copies can be filed before the Assessing Officer after getting

necessary certified copies. This Tribunal is of the considered opinion that the bills, books of accounts and other documents which are in the custody of Central Excise and Customs Authorities are also relevant factor to be taken into consideration. Moreover, the details of lorry registration number furnished by the assessee also need to be verified since the assessee claims that he furnished only the correct registration number. In view of the above, this Tribunal is of the considered opinion that the Assessing Officer shall reconsider the matter afresh. Accordingly the orders of both the authorities below are set aside and the entire issue raised by the assessee is remitted back to the file of the Assessing Officer. The assessee shall take all necessary attempts to take certified copies of bills, vouchers and other documents which are said to be in the custody of the Central Excise and Customs Authority. In case, the assessee expresses any difficulty in getting the certified copy, the Assessing Officer may also get those documents by issuing necessary summon U/s.131 of the Act. The Assessing Officer there after shall decide the issue afresh in accordance with law after giving a reasonable opportunity to the assessee.

5. In the result all the appeals of the Revenue and assessee are allowed for statistical purposes.

Order pronounced in the court on 18<sup>th</sup> July, 2019 at Chennai.

Sd/-

(इंटूरी रामा राव)  
(Inturi Rama Rao)  
लेखा सदस्य /Accountant Member

Sd/-

(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 18<sup>th</sup> July, 2019.

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती/Assessee
2. राजस्व/Revenue
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF