IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.24291 of 2015

M/s. Pokarna Ltd.
Rep. by its Chief Financial Officer
Mr.M. Viswanatha Reddy
No.105 1st floor Surya Towers
Sardar Patel Road
Secunderabad - 500 003. [Petitioner]

Vs

1 The Additional Commissioner of Customs (Group 7)
Custom House
No.60 Rajaji Salai
Chennai - 600 001.

2 The Assistant Commissioner of Customs (EPCG)
Custom House
No.60 Rajaji Salai
Chennai - 600 001. [Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the second respondent herein to sanction the refund amount of Rs.37 08 580/- in terms of petitioner application dated 22.10.2013 together with interest at an appropriate rate by way of compensation within the time frame that may be fixed by the Court.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.V.Sundareswaran, SC

O R D E R

This writ petition is filed for the issue of a Writ of mandamus directing the 2nd respondent to sanction the refund amount of Rs.37,08,580/- in terms of petitioner's application dated 22.10.2013 together with interest, at an appropriate rate, by way of compensation within the time frame.

2. The learned counsel for the petitioner submitted that the petitioner firm, engaged in quarrying and manufacture of granite produces and apparel products, filed a bill of entry No.04033 dated 06.05.2003 for the clearance of Hitachi Hydraulic Excavator with accessories against EPCG Licence dated 31.03.2003 in terms of Customs Notification dated 19.04.2002. He would further submit that on information, the petitioner's place of business was visited on 03.08.2011 by the District Revenue Intelligence officials, who found that the capital goods imported vide bill of entry mentioned above was not available at the survey number mentioned in the bond executed by the petitioner firm and accordingly, on insistence, the petitioner paid a sum of Rs.16,50,000/- towards duty and Rs.12,33,580/- towards interest amount. Pursuant to the verification made by the District Revenue Intelligence officials, a show cause notice dated 13.03.2012 was also issued, to show cause as to why the notification benefit under 44/2002 dated 19.04.2002 should not be denied for the purpose of confiscation under Section 111(o) of the Customs Act, 1962 and for imposition of penalty under Section 114 A of the Act. Adding further, learned counsel for the petitioner submitted that a reply was filed to that notice, however, the 1st respondent, passed an order in original dated 10.09.2012 denying the notification benefit extended under Notification dated 19.04.2002. Against the said order, the petitioner preferred an appeal before the Commissioner of Customs (Appeals) in C.Cus.No.990/2013 and ultimately, it was held in favour of the petitioner by the appellate authority by holding that the petitioner firm has not violated the conditions of the Notification No.44/2002 dated 19.04.2002 and allowed the appeal by order dated 11.07.2013. It is the further submission of the learned counsel for the petitioner that pursuant thereto, the petitioner firm filed refund application with the 1st respondent vide letter dated 22.10.2013 for sanction of refund amount of Rs.37,08,580/- (D.D.No.394904 dated 05.09.2011 for Rs.16,50,000/-, D.D.No.394958 dated 17.09.2011 for Rs.12,33,580/- and Bank Guarantee encashed D.D.No.226209 dated 24.09.2012 for Rs.8,25,000/-) The said application is kept pending. However, the 2nd respondent had informed the petitioner firm that the department had filed an appeal before the Customs Tribunal against the order in Appeal dated

11.07.2013. Hence, the petitioner is before this Court.

3. The learned Standing Counsel for the respondents based on the counter affidavit filed submitted that as against the order in appeal dated 11.07.2013, the department has filed an appeal along with stay application and hence no interference is warranted.

4. In reply, the learned counsel for the petitioner would submit that even in the reply filed there is no averment with regard to grant of stay by the Tribunal in the stay application filed along with the appeal by the department. Hence, the learned counsel for the petitioner has insisted to pass appropriate orders granting refund of the amount as claimed in the application of the petitioner dated 22.10.2013.

5. This Court heard the submissions made by the learned counsel on either side and perused the materials available on record.

6. On considering the submissions made by the learned counsel on either side, to give a quietus to this issue, this Court is of the view that without going into the merits or with regard to the pendency of the appeal before the Customs, Excise and Service Tax Appellate Tribunal, Chennai, the refund claim made by the petitioner shall be directed to be considered by the 1st respondent within a reasonable time.

7. Accordingly, the 1st respondent is directed to consider the application of the petitioner dated 22.10.2013 with regard to refund of a sum of Rs.37,08,580/- and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1 The Additional Commissioner of Customs (Group 7)
Custom House
No.60 Rajaji Salai
Chennai - 600 001.

2 The Assistant Commissioner of Customs (EPCG)
Custom House
No.60 Rajaji Salai
Chennai - 600 001.

1 CC to Mr.S.Murugappan, Advocate SR.No. 48212

1 CC to Mr.V.Sundareswaran, Advocate SR.No. 48455

W.P.No.24291 of 2015

EV (CO)
PSI (23.09.2015)