IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.28331 to 28333 of 2015

M/s.Medsource Ozone
Biomedicals Pvt. Ltd.
No.238-LGF Sant Nagar
East of Kailash
New Delhi
Rep. by its Authorised Signatory
Shri Baldev Singh .. Petitioner in all WPs

v.

1 The Commissioner of Customs, Chennai
VIII Commissionerate, Customs House
No.60 Rajaji Salai
Chennai-600 001

2 The Assistant Commissioner of Customs
(Refunds) Customs House
No.60 Rajaji Salai
Chennai-600 001 .. Respondents in all WPs

Writ Petition No.28331/2015 filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus calling for records of the 2nd respondent in and connected with order-in-original Noa.37142/2015 dated 12.3.2015 quash the same and direct the respondents herein to disburse the refund amount of Rs.36,590/- with interest at appropriate rates.

Writ Petition No.28332/2015 filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus calling for records of the 2nd respondent in and connected with order-in-original Noa.37142/2015 dated 29.4.2015 quash the same and direct the respondents herein to disburse the refund amount of Rs.9973/- with interest at appropriate rates.

Writ Petition No.28333/2015 filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus calling for records of the 2nd respondent in and connected with order-in-original Noa.33677/2015 dated 18.12.2014 quash the same and direct the respondents herein to disburse the refund amount of Rs.30,551/- with interest at appropriate rates.

For Petitioner : Mr.B.Satish Sundar
For Respondent : Mr.Vikram Ramakrishnan

COMMON ORDER

The petitioner has come forward with these writ petitions challenging the orders of the second respondent dated 12.3.2015, 29.4.2015 and 18.12.2014 and to direct the respondents herein to disburse the refund amount with interest at appropriate rates.

The facts of the case are as follows:-

2.1 Petitioner company is a Private Limited Company, which is in the business of manufacture, research and development of Vitro Diagnostics, which had its development unit at Faridabad, wherein more than 200 skilled and technical personnel are employed. For the purpose of conducting its business, the petitioner entity causes imports of various specialized equipments, consumables, chemicals and other Diagnostics material from various countries. The petitioner entity has been favoured with an Importer Exporter Code (IEC), issued by the office of the JDGFT, New Delhi and also favoured with PAN by the Income Tax Department.

2.2 During the course of its business, the petitioner caused import of "Clinical Chemistry Analyser with standard accessories", "Diagnositc Reagent" and "Urine Reagent Strips and Urine Chemistry Analyser" respectively from its supplier in South Korea under Bills of Entry dated 19.04.2013 and 06.05.2013 with respect to W.P.No.28331 of 2015, Bill of Entry dated 03.01.2013 with respect to W.P.No.28332 of 2015 and Bills of Entry dated 06.07.2013, 04.09.2013, 06.12.2013 and 25.01.2014 with respect to W.P.No.28333 of 2015. They have also discharged customs duties for the goods including Special Additional duty amounting to Rs.36,590/, Rs.9,973/- and Rs.30,551/- respectively. After import and clearance, the said goods were sold locally on sufferance of Value Added Tax. Therefore, according to the petitioner, they are eligible to claim refund of the said amount from the respondent vide notification dated 14.09.2007. In view of the same, the petitioner made applications dated 15.04.2014, 28.12.2013 and 04.07.2014 respectively for refund of the said amount, which were also taken on file by the 2nd respondent. However, the 2nd respondent, on scrutinizing the same, for want of jurisdiction rejected the claim of the petitioner by the impugned orders dated 12.03.2015, 29.04.2015 and 18.12.2014. Aggrieved over the same, the petitioner is before this Court.

3.1 According to the learned Counsel for the petitioner, both the authorities i.e., Assistant Commissioner of Customs House and Air Cargo Complex have concurrent jurisdiction over the ports as well as the Airport under Notification No.15/2012-Cus/(NT), dated 7.3.2002. Had an opportunity of hearing been given to the petitioner, all these facts could have been established before the authority. On the other hand, without giving an opportunity, the impugned orders came to be passed. Further, the learned Counsel for the petitioner placing reliance on the Judgment reported in 2012(284) ELT 218 (Commissioner of Customs, Chennai v. Drive India Enterprise Solutions Ltd.) submitted that in the event of the 2nd respondent finding that he had no jurisdiction to entertain the refund claim, he ought to have pointed out the same to the petitioner by issuing deficiency memo, which has not been done. Further, having found that the refund claim of the petitioner was in order in all aspects, the 2nd respondent ought to have transferred the files to the office of the Assistant Commissioner of Customs (Refunds) at Air Cargo Complex, Meenambakkam, Chennai. In these circumstances, it is useful to extract the relevant passage of the judgement cited above, which reads as follows:-

> "5. We find from Section 27 of the Customs Act, 1962, that a person claiming refund can make an application to the AC/DC of Customs. It is implied that it should be filed before AC/DC having jurisdiction. We also find that under the Notification No.15/2002-Customs (N.T.), dated 7.3.2002 (as amended), against S.No.7 in the table annexed thereto, the jurisdiction of AC/DC of Customs have been specified in terms of the jurisdiction of Commissioners of Customs (Airport & Air Cargo), Port (Import) and Port (Export) at Chennai. Under Col.3, the jurisdictions of these Commissioners have been specified to be inclusive of the Port of Chennai, Port of Ennore as well as Chennai Airport etc. From the above, it is very clear that the Commissioners of Customs in Chennai and their AC/DC of Customs have concurrent jurisdiction over the ports as well as the airport. Hence, it cannot be said that the main refund application was filed before the AC/DC of customs, who did not have jurisdiction over the Airport and Air Cargo Complex. It would, of course, have been expedient if the appellants have filed the refund claim before the DC/AC at the Air Cargo as is done normally. Similarly, the DC/AC in the Customs House could have promptly transferred the said claim to the DC/AC in the Air Cargo. However, the order of the lower appellate authority transferring the refund claim to the dealing Assistant/Deputy Commissioner in the Air Cargo complex cannot be said to be not legal and proper, even though he has passed the said order or other reasons. Accordingly, we uphold the impugned order and dismiss the appeal filed by the department. The stay application filed by the department also stands disposed of."

3.2 The learned counsel for the petitioner further submitted that the Commissioner of Customs have concurrent jurisdiction and hence, there is no impediment for the authority to consider the claim of the refund and on that basis prayed that the impugned orders are liable to be quashed.

4. The learned Standing Counsel appearing for the respondents submitted that pursuant to 2(c) of Notification No.102/2007-Cus., dated 14.09.2007, the jurisdictional Assistant Commissioner alone shall sanction and refund the claim made by the assessees. In view of the same, the learned Standing Counsel fairly submitted that the petitioner may be directed to file necessary refund claims before the jurisdictional Assistant Commissioner and on receipt of the same, the same shall be considered and to that effect necessary directions may be issued by this court.

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

6. Admittedly, the refund applications were filed by the petitioners belatedly. However, this court is of the view that the delay is not on the higher side. Hence, the impugned orders dated 12.3.2015, 29.4.2015 18.12.2014, are liable to be set aside and accordingly, the same are set aside and the second respondent is directed to send the original refund applications submitted by the petitioner to the Assistant Commissioner of Customs (Airport and Air Cargo). The petitioner is also permitted to submit the copy of the refund applications to the Assistant Commissioner of Customs (Airport and Air Cargo) along with the copy of this order, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the Assistant Commissioner of Customs (Airport and Air Cargo) shall consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter. It is made clear that if the petitioner fails to avail this opportunity, it is open to the respondent to pass appropriate orders.

The writ petitions are disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Commissioner of Customs, Chennai
VIII Commissionerate, Customs House
No.60 Rajaji Salai
Chennai-600 001

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

+ 3 ccs to Mr.B. Sathishsundar, Advocate SR.51469

W.P.Nos.28331 to 28333 of 2015

KGK(CO)
Eu 26.10.15