

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.29132 of 2015

M/s.Alfred Berg & Co. (1) Pvt. Ltd.,
rep. by its Director Mr.Chandrakant Jain,
C-28, Sidco Pharmaceutical Complex,
Alathur, Kanchipuram District - 603 110,

... Petitioner

Vs.

The Assistant Commissioner of Central Excise,
Tambaram Division, Plot No.40,
Ranga Colony, Rajakilpakkam,
Chennai - 600 073.

... Respondent

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records in the order in original No.204 of 2015, dated 06.08.2015, passed by the respondent herein and to quash the same, holding the same to have been passed without jurisdiction and against the provisions of the Central Excise Act, and therefore, ab initia void and unsustainable and consequently, to direct the respondent to dispose of the application for refund, dated 30.11.1998, in accordance with law.

For Petitioner : Mr.N.Viswanathan
For Respondent : Mr.K.Mohanamurali
Standing Counsel

O R D E R

This Writ Petition is filed, seeking to quash the order in original No.204 of 2015, dated 06.08.2015, passed by the respondent herein, and consequently, to direct the respondent to dispose of the application for refund, dated 30.11.1998, in accordance with law.

2. The petitioner-Company is a manufacturer of P or P medicaments, falling under Chapter 30 of the Central Excise Tariff Act, 1985, duly registered with the excise authorities. The case of the petitioner is that the medicines manufactured by them were cleared for home consumption as well as exported out

of India. When this being the factual position, they filed a refund claim on 30.11.1998, acknowledged by the respondent on 21.12.1998, seeking payment of the rebate in cash, amounting to Rs.2,97,007/- on the exports made by them in terms of the erstwhile Rule 57 F (13) of the Central Excise Rules, 1944, against the Modvat credit, lying in their RG 23 P II account, being the duty pertaining to the inputs used in the exported final products exported under A.R. 4 No. 1/98-99, dated 30.11.1998, with the Assistant Commissioner of Central Excise, Tambaram Division, the respondent herein, who rejected the same. Against such rejection, an Appeal in No.3 of 2000 (M-III) was filed and the appellate authority remand the same by order, dated 05.01.2000, for fresh consideration. Pursuant to the same, a show cause notice, dated 09.02.2000 was issued, for which, the petitioner sought personal hearing by letter, dated 22.07.2000, followed by various reminders. Without adjudicating the issue related to the said notice, dated 09.02.2000, the impugned order came to be passed, against which, the petitioner is before this Court.

3. Heard both sides.

4. Though various issues are raised in this Writ Petition, and defending the same, a counter affidavit is also filed, now, the learned counsel appearing for the petitioner has submitted that, it would be suffice, if a direction is issued to the respondent to adjudicate the issue, which culminated in the issuance of show cause notice, dated 09.02.2000 alone, after affording due opportunity to the petitioner to fortify its case. Insofar as the claim made by the petitioner, vide Application, dated 30.11.1998, regarding payment of statutory interest on the refund amount is concerned, the learned counsel submitted that the petitioner would not press upon the interest on the refund amount, and to that effect, the petitioner has also filed an undertaking affidavit today, specifically stating that they will not claim the statutory interest payable on the refund, subject to the sanction of refund to the petitioner by the respondent.

5. The above said undertaking affidavit is placed on record. Considering the aforesaid submissions made by the learned counsel appearing for the petitioner as well as the affidavit filed, this Writ Petition is disposed of, by directing the respondent to adjudicate upon the issue relating to the show cause notice, dated 09.02.2000, for which purpose, the petitioner agrees to appear before the respondent either on 25.01.2016 or 27.01.2016, to avail reasonable opportunity of personal hearing to put forth their defence and the respondent is directed to complete the adjudication process, and pass appropriate orders within a period of six weeks thereafter on merits and in accordance with law.

6. The Writ Petition is disposed of accordingly, as stated above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

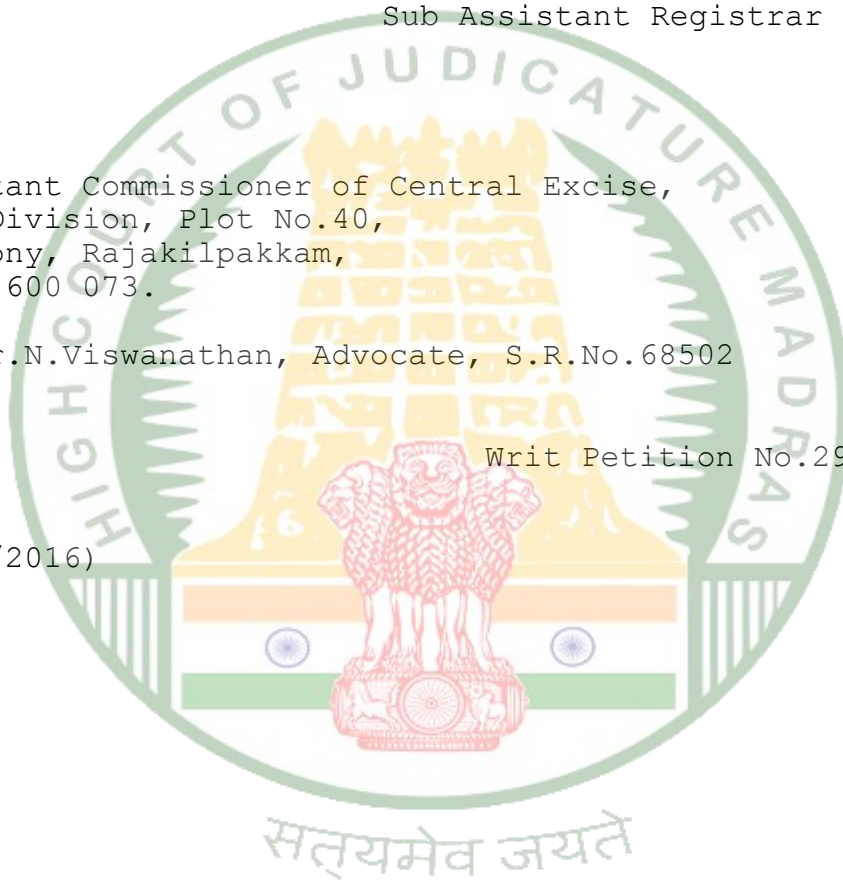
To

The Assistant Commissioner of Central Excise,
Tambaram Division, Plot No.40,
Ranga Colony, Rajakilpakkam,
Chennai - 600 073.

+1cc to Mr.N.Viswanathan, Advocate, S.R.No.68502

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bvr (CO)
srg (21/01/2016)



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