IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.30445 of 2015

M/s.Textile Dyechem Private Limited
represented by its Authorised Signatory
K.Ganesan .. Petitioner

vs.

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

Writ Petition 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 No.37438/2015 dated 07.05.2015, quash the same and direct the respondents herein to disburse the refund amount of Rs.4,12,387/- with interest at appropriate rates.

For Petitioner : Mr.B.Satish Sundar
For Respondents : Dr.Devendran

O R D E R

The petitioner has come forward with the present writ petition challenging the order of the second respondent dated 07.05.2015 and to direct the respondents herein to disburse the refund amount with interest at appropriate rates.

2.The facts of the case are as follows:-

2.1 The Petitioner company is a Private Limited Company, which is in the business of manufacture and trading of chemicals. For the purpose of conducting its business, the petitioner entity causes imports of consumables, chemicals and other materials from various countries. The petitioner entity has been favoured with an Importer Exporter Code (IEC), issued by the office of the JDGFT, Chennai and also favoured with PAN by the Income Tax Department.

2.2 During the course of its business, the petitioner caused import of "Propylene Glycol/BIC NF/Hydrogen Peroxide" covered under 50 Bills of Entries as stated in the affidavit filed along with this petition. Thereafter, the petitioner claimed refund in terms of Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008 dated 01.08.2008 read with CBEC Circular No.6/2008-Cus dated 28.04.2008 and 16/2008-Cus dated 13.10.2008 and made application along with necessary documents. On scrutinising the same, the second respondent, for want of jurisdiction and on the ground of limitation, partly rejected the claim of the petitioner, by the impugned order dated 07.05.2015. 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 order came to be passed.

3.2 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.

3.3 The learned counsel for the petitioner also 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 order is 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. I have considered the submissions made on both sides and perused the materials available on record.

6. In similar circumstances, in the decision reported in 2012(284) ELT 218 (Commissioner of Customs, Chennai v. Drive India Enterprise Solutions Ltd.) it has been held 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."

7. In view of the above, the impugned order dated 07.05.2015 passed by the second respondent is set aside and the second respondent is directed to send the original refund application 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 application 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.

8. The writ petition is disposed of with the above directions. No costs.

sd/-
Assistant Registrar(J)

/TRUE COPY/

Sub-Assistant Registrar

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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

+1 CC to MR.B.Satish Sundar Advocate. SR.NO.69213
+1 CC to Dr.Devendran Advocate. SR.NO. 68592

W.P.No.30445 of 2015

CO-SCD
JD 11/01/2016