fIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.9062/2015

M/s.Hyundai Motors India Limited represented by its Assistant Vice President-Taxation B.C.Datta Kancheepuram 602117 ....Petitioner

Vs

1.The Department of Revenue, Ministry of Finance represented by its Joint Secretary, New Delhi-66

2.The Commissioner of Central Excise Large Tax Payer Unit, Chennai-101 ....Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief stated therein.

For Petitioner : Mr.K.Magesh

For Respondents : Mr.A.P.Srinivas, Standing Counsel

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Order No.378/14.cx, dated 11.12.2014 on the file of the 1st Respondent and quash the same and consequently, to direct the 2nd Respondent to refund the balance rebate claim of Rs.28,89,150/- to the petitioner.

2. The case of the Petitioner is that the Petitioner is a manufacturer and exporter of motor cars, falling under Chapter 8703 of the Central Excise Tariff Act, 1985 and the Petitioner clears their final products to various countries by way of exports without payment of duty or on payment of duty under a claim of rebate. In the month of November 2008, the Petitioner exported the cars and lodged the original rebate claims on different dates amounting to Rs.167,34,32,925/-. The Assistant Commissioner granted the rebate claims in full and the refund claim has been received. Consequent to the clearance of the cars meant for exports, it was noticed that

303 numbers of i20 cars were subjected only to excise duty at 25% and the specific duty of Rs.15,000/- per car was not levied in the excise invoice due to system error and thus, the ARE1 did not contain the said difference amount. The difference amount of additional duty amounting to Rs.46,81,350/- was debited in the CENVAT credit amount on 15.12.2008 and they had duly intimated the payment of the same to the Assistant Commissioner LTU on the same day vide OIO.No.LTUC/71/2010 (Rebate-AC). A supplementary rebate claim for Rs.46,81,350/- was filed before the 2nd Respondent on 27.11.2009 and the same was partly granted for 116 cars amounting to Rs.17,92,200/- being the rebate claim falling within the period of limitation of one year from the date of shipment of the export cars, as stipulated under Section 11B of the Central Excise Act, 1944. The balance of 187 cars exported amounting to Rs.28,89,150/- was rejected on the ground that the claim was time barred in terms of Section 11B of the said Act. The Appellate Authority, namely, the Commissioner (Appeals) LTU, upheld the rejection based on time limit in their Order in Appeal No.16/2011, dated 23.2.2011. In the revision also, the 1st Respondent passed the impugned order, upholding the rejection of the claim on the ground of limitation. Hence, this Writ Petition has been filed for the relief as stated above.

3. The 2nd Respondent has filed a counter affidavit, contending that the Petitioner filed rebate claim dated 27.11.2009 for refund of differential duty of excise amounting to Rs.46,81,350/- paid by them on 15.12.2008 (Rs.15000/- per car) for export of 303 numbers of i20 cars and 187 cars were exported on 11.11.2008 and 15.11.2008 and the claim of rebate was filed after one year i.e. on 27.11.2009. Hence, a show cause notice dated 22.01.2010 was issued to the Petitioner as to why a part of their claim for Rs.28,89,150/- should not be rejected as time barred in terms of Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 and Notification No.19/2004-CE(NT), dated 6.9.2004. The appeal filed by the Petitioner was also rejected by order dated 23.2.2011 on the ground of limitation and the revision was also dismissed by order dated 12.12.2014 on the same ground. There is no ambiguity in Section 11B of the Central Excise Act read with Rule 18 of the Central Excise Rules, 2002, regarding statutory time limit of one year for filing rebate claims. The said notification should be read in harmony with Section 11B and could not be interpreted separately. There is no provision to condone the delay in filing the rebate claims under the said Act and no relaxation is given for the time limit to file the rebate claim. Hence, this Writ Petition is liable to be dismissed.

4. The learned counsel for the Petitioner contended that there is no connection between the rebate claim filed

under Rule 18 of the Central Excise Rules, 2002 and Section 11B of the Central Excise Act and that the specific excise duty was not paid due to system error and ARE1 Form did not contain the specific duty and there was a short payment of excise duty, which was not noticed by the authority and was paid by the Petitioner on its own and the authorities failed to consider that the difference amount of additional duty, amounting to Rs.46,81,350/- was paid by the Petitioner on 15.12.2008 within one year i.e. on 27.11.2009 from the date of payment and that therefore, it is only to be construed as an extension of the original claim and in such circumstances, prayed for quashing of the impugned order.

5. The learned Standing Counsel for the Respondents has submitted that relying on the relevant provisions of the Act and Rules, the impugned order has rightly been passed and hence, supported the impugned order and prayed for dismissal of this Writ Petition.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. Admittedly, the Petitioner filed the supplementary rebate claim belatedly on 27.11.2009 i.e. after one year from the date of payment of duty i.e. on 15.12.2008. The rebate claim was rejected as time barred in terms of Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 and Notification No.19/2004-CE(NT), dated 6.9.2004.

8. Notification No.19/2004 provides for presentation of rebate claims to Central Excise. Rule 18 of the Central Excise Rules, 2002 reads as under:-

> "Rule 18: Rebate of duty - Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.
>
> Explanation: "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."

9. Section 11B reads as under:-

> "Claim for refund of duty. — (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the

Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

....

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant’s account current maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

(e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause

(f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything any judgment, decree, order or direction of the to the contrary contained in Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under proviso to sub-section (2) shall be laid before each clause (f) of the first House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of any notification issued under clause (f) of doubts, it is hereby declared that the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by

notification in the Official Gazette.

Explanation. — For the purposes of this section, -

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person; in the case of goods which are exempt from payment of duty

(eb) this Act or the rules made thereunder, the date of

adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgement, decree, order or direction;

(f) in any other case, the date of payment of duty.

10. There is no ambiguity in Section 11B of the Central Excise Act read with Rule 18 of the Central Excise Rules, 2002, regarding statutory time limit of one year for filing rebate claims. The period of limitation has been clearly stipulated in Section 11B of the Act. It is clear from Section 11B, all claims for rebate pending on the date would be governed by a period of one year from the date of shipment and hence, all claims for rebate/refund have to be made only under Section 11B. There is no reference in the said notification about the supplementary claim. The said notification should be read in harmony with Section 11B and could not be interpreted separately. There is no provision to condone the delay in filing the rebate claims under the said Act and no relaxation is given for the time limit to file the rebate claim. The date, on which the additional duty amount was paid, cannot be taken as relevant date for filing rebate claim and whatever the amount paid by the Petitioner on various dates will relate back to the date of export only, which is the relevant date for the purpose of the said act and the non payment or part payment will not alter the relevant date and once the relevant date is fixed under the Act, the time limit applies.

11. In 1997-5-SCC-536:1997-89-ELT-247-SC (Mafatlal Industries Limited Vs. Union of India), it has been held that such claims for rebate can only made under Section 11B within a period of limitation as stated therein. In a recent decision of the Honourable Supreme Court reported in 2015-319-ELT-598-SC (Union Of India Vs. Uttam Steel Limited), the Honourable Supreme Court, after referring to the Mafatlal's Case, held that a rebate of duty of excise on excisable goods exported out of India would be governed by the time limit

prescribed in Section 11B.

12. In view of the provisions of the Act and Rules as stated above and in view of the decisions of the Honourable Supreme Court cited supra and when the rebate claim was filed after stipulated period of one year as mentioned in Section 11B of the Central Excise Act, this court is of the considered view that the authorities are right in rejecting the rebate claim of the Petitioner on the ground of limitation and hence, this Writ Petition is liable to be dismissed.

13. In the result, this Writ Petition is dismissed, as devoid of merits. No costs.

07.10.2015

Index:Yes/No
Web:Yes/No
Srcm

To:

1.The Joint Secretary, The Department of Revenue,
  Ministry of Finance
  New Delhi-66

2.The Commissioner of Central Excise,
  Large Tax Payer Unit, Chennai-101

+1 CC to Mr.K.Magesh Advocate. SR.NO. 54314
+1 CC to Mr.A.P.Srinivasan Advocate. SR.NO. 55387

WP.No.9062/2015

CO-KV
JD 16/10/2015