IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.15339 of 2002

M/S.ARTHANARI LOOM CENTRE
A PARTNERSHIP FIRM
REP BY ITS AUTHORISED SIGNATORY Mr.M.K.Shajathali
SALEM. ... PETITIONER

Vs

1. THE SECRETARY
CENTRAL BOARD OF EXCISE AND CUSTOMS,
MINISTRY OF FINANCE
SOUTH BLOCK NEW DELHI.1.

2. COMMISSIONER OF CUSTOMS
1 WILLIAMS ROAD CANTONMENT
TRICHY.1.

3. ASSISTANT COMMISSIONER OF CUSTOMS
CUSTOM HOUSE
TUTICORIN.4.

4. ASSISTANT COMMISSIONER OF CUSTOMS (REFUND)
CUSTOM HOUSE ,TUTICORIN. ... RESPONDENTS

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus to direct the respondent Nos.2 to 4 to refund a sum of Rs.70,76,029.35 (Rs.61,53,069/- principal plus Rs.9,22,960.35 being the interest at 15%) to the petitioner pursuant to the order No.574/2001 dated 27.04.2001 of the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Chennai, setting aside the demand, penalty and fine.

For Petitioner : Mr.C.Saravanan

For Respondents : Mr.P.Mahadevan,
Senior Counsel

O R D E R

This writ petition has been filed for the issue of a writ of mandamus to direct the respondent Nos.2 to 4 to refund a sum of Rs.70,76,029.35 (Rs.61,53,069/- principal plus Rs.9,22,960.35 being the interest at 15%) to the petitioner, pursuant to the order No.574/2001 dated 27.04.2001 of the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Chennai, setting aside the demand, penalty and fine.

2. The case of the petitioner is that as against the order No.15/99 dated 14.07.1999 passed by the Commissioner of Customs, Trichy with respect to confiscation of fourteen machineries which were not covered by the EPCG licence, the petitioner preferred an appeal in No.697/2000 before the CEGAT, Chennai, which set aside the order in original and directed for denovo proceedings on the ground of denial of sufficient opportunity. Thereafter, the Commissioner of Customs, Trichy, in his denovo adjudication Order No.59/2000 dated 11.10.2000, confiscated 14 machines which were not covered by EPCG License at the time of import, however, with an option to redeem the same. As against the said order, the petitioner preferred an appeal before the CEGAT in Order No.573/2001, which set aside the denovo order and allowed the appeal, against which, the department filed a Civil Appeal No.3207 of 2002 before the Hon'ble Supreme Court, which was dismissed for non prosecution on 16.07.2008. In the meanwhile, the petitioner filed the present writ petition before this Court.

3. This Court, by way of an interim order dated 29.07.2002, directed the petitioner to furnish bank guarantee for a sum of Rs.61,53,069/- and on such furnishing, the respondents were directed to pay the said sum and further directed the petitioner to keep the bank guarantee alive till the disposal of the writ petition. Further, by order dated 22.07.2005, this Court clarified that there is no need to keep the bank guarantee alive or extend its life as ordered on 29.07.2002.

4. As per Circular F.No.275/37/2K-CX.8A dated 02.01.2002, issued by the Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi, it was clarified that refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962, need not be insisted upon and a simple letter from the person who has made such deposit, along with an attested xerox

copy of the order-in-appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose and all the pending refund applications already made under the relevant provisions of the Indirect Tax Enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits,and will be processed as such and similarly, bank guarantees executed in lieu of cash deposits shall also be returned.

5. It is an admitted fact that the entire amount has been refunded and interest alone has to be paid to the petitioner. The claim of the petitioner towards interest under Section 129 EE of the Customs Act, 1962, could have been granted within 60 days, however, according to the learned counsel for the petitioner, the same has not been made. Further, the issue in question has already been over, since the Civil Appeal No.3207 of 2007 filed by the department was dismissed for non prosecution by order dated 16.07.2008 by the Hon'ble Apex Court. Even thereafter, the petitioner's claim for interest has not been considered.

6. At this juncture, it is useful to refer to the Judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Hyderabad vs. I.T.C. Limited reported in 2005 (179) E.L.T. 15 (S.C.), wherein, the Hon'ble Supreme Court has held as follows:-

> "The issue in this appeal and in several other appeals is whether the pre-deposit made as a pre-condition for the hearing of the appeal under the Central Excise Act, 1985, was, on the assessee being ultimately successful, refundable to the assessee with interest. The learned Solicitor General has taken instructions and has stated before this Court that the Central Board of Excise and Customs proposes to issue a Circular in connection with the payment of interest on all such pre-deposits. A draft copy of the proposed circular has been handed over to this Court. Having regard to the contents of the draft circular we direct compliance with the

> final order impugned before us and payment of interest in terms of the draft circular. The draft circular shall be appended to and the contents form part of this order. The appeal is disposed of. In view of this order any judgment of any High Court holding to the contrary will no longer be good law".

7. Pursuant to the same, the Ministry of Finance has issued Circular:802/35/2004-CX dated 08.12.2004, wherein in paragraph Nos.4 and 5 of, the Central Board of Excise and Customs, New Delhi, has stated as follows:-

> "4. Accordingly, the contents of the Circular No.275/37/2000-CX.8A dated 2.1.2002 [2002 (139) ELT T38], as to the modalities for return of the pre-deposits are reiterated. It is again reiterated that in terms of the Hon'ble Supreme Court's order such pre-deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal/Court or other Final Authority unless there is a stay on the order of the Final Authority/CESTAT/Court by a superior Court.
>
> 5. Delay beyond this period of three months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers. All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT/Court, such orders will have to be complied with and it may be recoverable from the concerned officers..".

8. The learned Standing Counsel for the respondents submitted that interest for actual number of days has to be verified by the department.

9. In view of the decision of the Hon'ble Supreme Court referred to above and in view of the Circulars cited supra and in view of the submission made by the learned Standing Counsel for the respondents the petitioner is directed to submit a calculation memo with regard to interest to the respondents

within a period of two weeks from the date of receipt of a copy of this order and on such filing, the same shall be considered and orders passed within a period of four weeks thereafter

The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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CUSTOM HOUSE ,TUTICORIN.

+1cc to Mr.P.Mahadevan, Sr. Counsel for Central Government and Sr. Counsel for Customs Excise & Service Tax, S.R.No.50622

W.P.No.15339 of 2002

GJ(CO)
CA(19/10/2015)