* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 03rd December, 2015**

\+ W.P.(C) 6438/2013

M/S. DELTON CABLES LIMITED ..... Petitioner

Through: Mr. Manoj Ohri, Sr. Advocate with Mr. P.C. Patnaik, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sanjeev Narula with Ajay Kalra, Advocates for R-1 to R-4. Mr. Rupesh Kumar, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. The petitioner has filed the present petition under Articles 226 of the Constitution of India seeking directions to the respondents that the respondent No.4, Policy Relaxation Committee (PRC) may pass an appropriate order to refund the Terminal Excise Duty (TED) amounting to Rs.42,50,643/- (Rupees Forty two lakhs fifty thousand six hundred forty three) as per the provisions of the Foreign Trade Policy (FTP) along with interest @ 18% per annum. The petitioner also seeks directions to the PRC, respondent No.4 to reconsider the application for sanction of terminal excise duty and give personal

hearing to the petitioner. The petitioner also seeks quashing of order dated 12.02.2013 issued by respondent No.4 and policy circular dated 15.03.2013 issued by respondent No.2 and letter dated 07.07.2013 issued by respondent No.4.

2. In a nut shell the facts of the case as set out in the petition are that the petitioner is a public limited company registered under the Companies Act, 1956, which is pioneered in manufacture of PVC wires and cables. The petitioner company is also engaged in, inter alia, developing cable technology, power distribution, applications and power management solutions used in refinery, oil and gas processing sites, chemical and fertilizer sites, power generation, transportation and urban development applications. On 20.12.2004, a contract was executed between West Bengal Power Development Corporation Ltd. (Project Authority) and Bharat Heavy Electricals Ltd. (BHEL) (Project Authority) for supply of equipments and materials. A project authority certificate was issued by the West Bengal Power Development Corporation Ltd. (Project Authority). On 25th April, 2007 in an extension to the said contract, a certificate dated 05.04.2005 was issued by the project authority to the main contractor.

3. In furtherance of the aforesaid contract, numerous purchase orders were received by the petitioner from the main contractor for the said project. Accordingly, the petitioner company made supplies and payments were received. During the delivery of said supplies, the petitioner company erroneously paid excise duty to the tune of Rs.42,50,643/- (Rupees Forty two lakhs fifty thousand six hundred forty three). The petitioner moved an application to respondent No.3

for refund of Terminal Excise Duty (TED), which was erroneously paid to the excise department. The respondent No.3, vide letter dated 25.05.2011 informed the petitioner that the petitioner company is not eligible for refund of TED since its name is not mentioned in the contract dated 20.12.2004. Aggrieved by the said letter, the petitioner made representation dated 04.08.2011 and 19.09.2011. The petitioner also submitted the project authorty's letter dated 21.07.2011 wherein it was stated that M/s. Delton Cables Ltd. was duly appointed as Sub-Contractor by M/s. BHEL, the main contractor for the said project.

4. The issue of the petitioner regarding refund of TED was referred to the Director General of Foreign Trade (DGFT), Ministry of Commerce and Industry. Vide impugned order dated 12.02.2013, respondent No.4 observed that the name of petitioner has not been mentioned in the contract as sub-contractor, hence, the condition of para 8.6.2 of FTP has not been complied with. It was also observed that the supply was under ICB contract which has been exempted *ab-initio* from payment of terminal excise duty, hence, refund cannot be allowed.

5. Learned senior counsel for the petitioner urges that respondent No.6 who was the main contractor had appointed the petitioner as the sub-contractor and the name of petitioner has been mentioned in the Vendor list. Learned senior counsel for the petitioner also pointed out that Policy Relaxation Committee (PRC) had allowed the refund of TED to M/s. Gamon India Ltd. in its meeting held on 29.05.2012. The refund of TED was also allowed to M/s. Voltamp Transformers Ltd. on 10.07.2012.

6. Before examining the merits of the case, it is necessary to consider the relevant provisions of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'). Section 5A of the Act empowers the Central Government to grant exemption from duty of excise either absolutely or subject to such conditions as may be specified. In exercise of the powers conferred under Section 5A of the Act, the Central Government issued notification dated 01.03.2006. As per entry 91 of the said notification, all goods supplied against international competitive bidding are exempted from duty of excise.

7. The Central Govt. in exercise of the powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (FTDR Act) issued Export and Import Policy 2004-2009. The Chapter 8 of the said policy provides for 'deemed exports' specified therein.

8. A similar question came up for consideration before Hon'ble Division Bench of this Court in LPA No.192/2015 and LPA No.196/2015 titled as '**Union of India & Ors. vs. Alstom India Ltd.**' decided on 28.07.2015. In the said case, writ petition bearing W.P.(C) No.1331/2015 was filed by M/s. Alstom India Ltd. claiming refund of TED which was rejected by the Director General of Foreign Trade, Ministry of Commerce and Industry. The said petition was disposed of by learned Single Judge on 11.02.2015. Thereafter, an appeal being LPA No.192/2015 was preferred. The Hon'ble Division Bench after considering the relevant provisions of the Act and the policy directed DGFT to consider the application of the writ petitioner for refund in terms of the provisions of the FTP, 2009-2014 and pass an appropriate order in accordance with law.

9. Learned counsel for both the parties have agreed that a similar direction may be issued in the present case.

10. In view of the above, the petition is disposed of with the direction that respondent No.3, DGFT will consider the application of the petitioner for refund in terms of the provisions of the FTP, 2004-2009 and pass an appropriate order in accordance with law uninfluenced by the impugned order dated 12.02.2013. The respondent No.3 will also consider the order passed on 29.05.2012 in the case of M/s. Gamon India Ltd. and order dated 10.07.2012 in the case of M/s. Voltamp Transformers Ltd. The respondent No.3 shall afford an opportunity of hearing to the petitioner and pass an appropriate order expeditiously and preferably within a period of eight weeks from today in accordance with law.

11. The petition stands disposed of accordingly. No order as to costs.

(VED PRAKASH VAISH)
JUDGE

DECEMBER 03rd, 2015
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