IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18834 of 2016 &
WMP No.16442 of 2016

1 M/s.Delta Power Solutions India Pvt Ltd
Rep by Ravigupta
Asst.General Manager-Commercial & Logistics
P.No.25&26 R.S.No.173/3 Om Shakthi Avenue
Karuvadikuppam, Puducherry0 605 008.
[PETITIONER]

Vs

1 Assistant Commissioner
Office of the Assistant Commissioner of Central Excise
Puducherry II Division
No.14 Municipal Street, Ajees Nagar
Reddiarpalayam, Puducherry 605010.

2 Commissioner of Central Excise (Appeals-II)
Office of the Commissioner of Central Excise (Appeals-II)
NO.26/1 Mahatma Gandhi Marg.
Nungambakkam, Chennai-600 034.
[RESPONDENTS]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified Mandamus, to call for the records relating to the Order in Appeal No.417/ 2015 (CXA-II) dated 21.12.2015 passed by the Second Respondent and to quash the same as arbitrary and illegal and direct the First Respondent to refund the amount of Cenvat credit of Rs.40,51,961/-.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.V.Sundareswaran - R1

O R D E R

Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner and Mr.V.Sundareswaran, learned counsel accepting notice on behalf of first respondent. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.In this Writ Petition, the petitioner challenges the order passed by the second respondent dated 21.12.2015, in an Appeal filed by them as against the order passed by the first respondent, rejecting the claim for refund, by an order dated 24.03.2014.

3.The learned counsel for the petitioner fairly concedes that though they had pleaded in the reply to the show cause notice dated 10.10.2013, that due to some unforeseen reasons they had discontinued the manufacturing activities and vacated the premises at Pondicherry and the said fact though noted by the Original Authority, while considering their case, the same was not canvassed before the Original Authority before passing the order dated 24.03.3014 and the petitioner was carried away by only canvassing the case relating to the inapplicability of the notification, which resulted in an order of rejection of the Refund Application. Further, the learned counsel for the petitioner would fairly state that even before the Appellate Authority the aforesaid point was not specifically raised and certain other grounds were urged, which resulted in rejection of the Appeal. Therefore, the petitioner has filed this Writ Petition challenging the impugned order passed by the Appellate Authority dated 21.12.2015.

4.Admittedly, as against the impugned order, the petitioner has an effective alternate remedy of Appeal under section 35(b) of the Central Excise Act, 1944 to the CESTAT. The issue being a factual issue with regard to the closure of the manufacturing activity, the same has to be necessarily agitated before the Appellate Tribunal, which is entitled to re-appreciate the factual position. The apprehension of the petitioner is that since the said point was not seriously canvassed before the Appellate Authority, the Tribunal may refuse to permit the petitioner to urge the said contention.

5.The petitioner need not have any apprehension in this regard. Even at the first instance, in their reply dated 26.11.2013, to the show cause notice dated 10.10.2013, they have set out averments regarding the closure of their manufacturing activities and those averments were referred to by the Original Authority in paragraph No.5 of its order dated 24.3.2014.

6.Therefore, while holding that the Writ Petition is not maintainable before this Court at this juncture, liberty is granted to the petitioner to approach the Tribunal and if an Appeal is filed before the Tribunal, the Tribunal may consider the same and if possible, give an early disposal of the matter, since it pertains to the refund claim and the specific contention of the petitioner is that they have closed down the business activities. Therefore, the Tribunal shall consider the case of the petitioner and dispose of the Appeal as early as possible, preferably within a period of six months, from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To
1 Assistant Commissioner
Office of the Assistant Commissioner of Central Excise
Puducherry II Division
No.14 Municipal Street, Ajees Nagar
Reddiarpalayam, Puducherry 605010.

2 Commissioner of Central Excise (Appeals-II)
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1 cc to Mr.Joseph Prabakar, Advocate, sr.29957
1 cc to Mr.V.Sundareswaran, Advocate, sr.30194

W.P.No.18834 of 2016

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