IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.29830 of 2015
and
M.P Nos.1 and 2 of 2015

M/s Consolidated Metal Finishing Pvt Ltd,
104, (N.P) Industrial Estate,
Ambattur,
Chennai - 600 098
represented by its Manager
R. Suresh .... Petitioner

vs

1. The Commissioner of Customs,
   Office of the Commissioner of Customs,
   (Chennai-IV), Custom House,
   No.60, Rajaji Salai
   Chennai - 600 001

2. The Commissioner of Customs (Appeals-II),
   Customs House,
   No.60, Rajaji Salai,
   Chennai - 1

3. The Assistant Commissioner of Customs (Refunds),
   Office of the Commissioner of Customs (Chennai-IV),
   Custom House,
   No.60, Rajaji Salai,
   Chennai - 1 ..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records in and connected with Order in Appeal No.C.Cus.II No.504/2015 dated 29.05.2015, passed by the second respondent herein upholding the Order-In-Original No.36021/2015 and 35021/2015 dated 15.04.2015 passed by the third respondent, quash the same as arbitrary, illegal, unconstitutional and against the principles of natural justice and consequently direct the respondents to refund the excess amount of Rs.1,92,760/- erroneously collected by the respondent department along with appropriate interest.

For petitioner : Mr.N. Balaji

For respondents : Mr.A. P. Srinivas
Standing Counsel

ORDER

The petitioners have filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records in and connected with Order in Appeal No.C.Cus.II No.504/2015 dated 29.05.2015, passed by the second respondent herein upholding the Order-In-Original No.36021/2015 and 35021/2015 dated 15.04.2015 passed by the third respondent, quash the same as arbitrary, illegal, unconsstitution and against the principles of natural justice and consequently direct the respondents to refund the excess amount of Rs.1,92,760/- erroneously collected by the respondent department along with appropriate interest.

2. According to the petitioners, in the course of its business, it had caused import of "Electro Plating Process" and had filed Bill of Entry on 09.05.2012 and the said Bill was assessed to duty for an amount of Rs.24,095/-. Since the payment mode was online e-payment mode, while making payment the portal displayed a message " Bank away server application error", whereby, the payment had got debited nine times amounting to Rs.2,16,855/- instead of Rs.24,095/-, thereby collecting an excess of Rs.1,92,760/-. Immediately, on realizing the excess debit from their bank account held with UCO Bank, a letter dated 16.05.2012 was addressed to the bank to refund the excess amounts debited, totalling Rs.1,92,760/-.

3. By letter dated 30.05.2012, the Bank informed the petitioners Company that they have paid the Customs Duty on 09.05.2012 through ice-gate in net banking for Rs.24,095/-. Further, the Bank had stated that while paying through ice-gate in net banking, there had been some bankaway application error and their account was debited 9 times with Rs.24,095/-. The petitioners were corresponding with the respondents for getting refund of the said sum of Rs.1,92,760/-

4. The petitioners also enclosed the correspondences between the petitioners and the respondents from 16.05.2012 to 25.11.2014. Thereafter, since the respondents did not refund the excess amount, the petitioners filed an application before the third respondent. The third respondent rejected the application, stating that the application had been filed after a period of one year, as contemplated under Sec.27 of the Customs Act. Aggrieved over the order passed by the third respondent, the petitioners preferred an appeal before the second respondent and the second respondent, by his Order dated 29.5.2015, has stated

that Sec.27 of the Customs Act 1962 cannot be made applicable for the reason that the said provision is applicable only to claim for refund of duty. Further, the second respondent rejected the appeal stating that the petitioners have not given any explanation/reason for taking almost 2 years 10 months to file the refund application from the payment of this excess amount. Further, the second respondent has stated that the petitioners were indolent and have not taken timely action.

5. The learned counsel appearing for the petitioners pointed out that the petitioners have been corresponding with the respondents for getting refund of the amounts from the years 2012 to 2014 and ultimately, they filed an application, seeking for refund of amount on 03.03.2015.

6. Admittedly, the second respondent himself stated that the provisions of Sec.27 of the Customs Act are not applicable to the petitioners' case for the reason that the claim, made by the petitioners, is not for refund of duty and further, the second respondent rejected the appeal stating that the petitioners have not given sufficient cause for the delay of 2 years and 10 months to file the refund application.

7. It is pointed out by the learned counsel for the petitioners that the petitioners have been corresponding with the respondents for getting refund of the amount from the years 2012 to 2014. The reasoning, given by the second respondent, cannot be accepted. It is not in dispute that the petitioners had paid an excess amount of Rs.1,92,760/- and the amount is lying with the third respondent and the third respondent cannot hold the amount without any reason.

8. Mr.A.P. Srinivas, learned Standing Counsel, appearing for the respondents, submitted that the petitioner can only file an application before the CESTAT under Sec.129-A of the Customs Act, 1962.

9. Since the third respondent is withholding the amount, excessively paid by the petitioners and when the second respondent himself has stated that the provisions of Sec.27 of the Customs Act are not applicable, the contentions, now raised by the learned counsel for the respondents, cannot be accepted.

10. In these circumstances, I am of the considered view that the third respondent is liable to refund a sum of Rs.1,92,760/-(Rupees one lakh ninety two thousand seven hundred sixty only) to the petitioners. Accordingly, the impugned orders, passed by the respondents 2 and 3 dated 29.5.2015 and 15.4.2015 are set aside and the respondents are directed to refund the excess amount of Rs.1,92,760/-(Rupees one lakh ninety

two thousand seven hundred sixty only), which was paid by the petitioner excessively, within a period of four weeks from the date of receipt of copy of this order. With these observations, the writ petition is allowed. No costs. Consequently, connected Mps are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs,
   Office of the Commissioner of Customs,
   (Chennai-IV), Custom House,
   No.60, Rajaji Salai
   Chennai - 600 001.

2. The Commissioner of Customs (Appeals-II),
   Customs House,
   No.60, Rajaji Salai,
   Chennai - 1.

3. The Assistant Commissioner of Customs (Refunds),
   Office of the Commissioner of Customs (Chennai-IV),
   Custom House,
   No.60, Rajaji Salai,
   Chennai - 1.

+1cc to Mr.N.Balaji, Advocate sr.14547
+1cc to Mr.A.P.Srinivas, Advocate sr.14536

W.P.No.29830 of 2015

svi(CO)
srg(14/03/2016)