IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.35500 of 2015

M/s Enterprise Internatinal Ltd.,
rep. by its Director Mr.Aditya Sarda .. Petitioner

..Vs..

1.The Assistant Commissioner of Customs (Exports)
Custom House, Chennai 600 001.

2.The Deputy Commissioner of Customs (Refunds)
Custom House, Chennai 600 001.
.. Respondents

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the second respondent herein to pass appropriate order in respect of refund claims pending in S24/SAD/1570/13 by granting refund of an amount of Rs.5,82,796/- by way of cash in accordance with the laws within a specific time frame.

For Petitioner : Mr.S.Murugappan

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

O R D E R

Heard Mr.S.Murugappan, learned Counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondent.

2.The petitioner-Company has come forward with this Writ Petition, praying for a direction upon the second respondent to pass orders on the refund claims submitted by them before the second respondent, since May 2013.

3.The petitioner filed a Refund Application stating that they are entitled for refund of the Special Additional Duty by way of cash refund and re-crediting the DEPB Licence. The petitioner has also referred to the Board's Circular No.18/2013 dated 29.04.2013, directing all Applications in which refund is to be granted by re-crediting in the DEPB licence, should be disposed of by 30.06.2013, which time limit was extended upto September, 2013.

4.The petitioner's Application for refund was kept pending and the petitioner has given two representations on 11.12.2013, to the second respondent and on 21.12.2013, to the first respondent. In the said representations, it was stated that since the DEPB scheme has already over, the petitioner is entitled for cash refund.

5.As those representations have not been considered and no orders have been passed for all these years, the petitioner filed this Writ Petition during November, 2015. Though notice was accepted by the respondents in November, 2015, and the matter was adjourned on more than six occasions, no counter affidavit has been filed.

6.The learned counsel for the petitioner referred to the decision of the Hon'ble Division Bench of the Delhi High Court in the case of ALLEN DIESELS INDIA PVT. LTD., v. UNION OF INDIA AND ORS. [2016 (334) ELT 624(DB)]. In the said case, the question arose was whether under the garb of circular issued by the Central Board of Excise and Customs ('CBEC'), the benefit granted under the notification issued in terms of Section 25(1) of the Customs Act, 1962, can be modified or amended. The Notification, which was referred to in the said case was Notification No.102/2007-Customs, dated 14.09.2007, issued in exercise of powers under section 25(1) of the Act, wherein the additional duty of customs, known as Special Additional Duty ('SAD'), under section 3(5) of the Customs Tarrif Act, 1975, was exempted, if the goods imported were meant for subsequent sale. The Hon'ble Division Bench pointed out that the various Circulars issued by the 'CBEC', extending time or imposing additional restrictions for availing the exemptions cannot be legally sustained and ultra vires of the provisions of the Act and accordingly, the Circulars which were the subject matter of challenge in so far as they seek to deny the importers and exporters the refund of SAD paid by using DEPB scrips, are held to be invalid.

7.In the instant case, till date the respondents have not taken a decision on the petitioner's Application and the matter has been put in the cold storage, since 2013. Therefore, this

Court is inclined to direct the second respondent to pass orders on the petitioner's refund claim.

8.Accordingly, the second respondent is directed to consider the petitioner's Application for refund dated 20.05.2013, along with petitioner's representations dated 11.12.2013 and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Needless to state that if the refund is to be granted, applicable statutory interest should also be granted.

The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Assistant Commissioner of Customs (Exports)
Custom House, Chennai 600 001.

2.The Deputy Commissioner of Customs (Refunds)
Custom House, Chennai 600 001.

1 cc to M/s.S.Murugappan, Advocate, sr.52668
1 cc to M/s.A.P.Srinivas, Advocate, sr.52595

 W.P.No.35500 of 2015

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