

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2016

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.36661 of 2015

and M.P.No.1 of 2015

M/s. CMS Info Systems Ltd.

Rep. by its Assistant General Manager (Accounts)

Mr. Abraham K. Joseph,

11th Floor, Silver Metropolis,

W.E. Highway, Goregaun (East),

Mumbai - 400 063

.. Petitioner

vs.

1. Union of India

represented by its Secretary,
Ministry of Finance,
North Block, New Delhi-110 001.

2. The Central Board of Excise & Customs,

Ministry of Finance,
North Block, New Delhi-100 001.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in the impugned Order-in-Original No.40759/2015 in ref F No.S24/SAD/2043/2015-Refunds 12.08.2015 on the file of respondent No.3, quash the same and direct the third respondent to allow the refund application filed by the petitioner

For Petitioner : Mr.S.Muthuvenkataraman

For Respondents: Mr.T.Pramod Kumar Chopda
Senior Standing Counsel

ORDER

1. This is a writ petition, whereby, the order dated 12.08.2015 is impugned.

1.1. By virtue of the impugned order, the petitioner's application for refund of Special Additional Duty (SAD) has been rejected.

2. The sole ground, on which, the said order is assailed, before me, is that, before rejecting the petitioner's application for refund, no personal hearing was afforded, despite the petitioner making a specific request, in that behalf.

3. Briefly, the writ petition arises in the background of the following facts :

3.1. The petitioner had filed a refund claim on 06.07.2016, in respect of eight (8) Bills of Entry, in terms of Notification No.102/2007-Cus., dated 14.09.2007. The said notification was amended, via notification No.93/2008-Cus., dated 01.08.2008. Concededly, the refund claim was filed beyond the period of one year stipulated in the aforesaid notification.

3.2. Insofar as the aspect of limitation is concerned, counsel for the petitioner relies upon a judgement of the Division Bench of the Delhi High Court in Sony India Private Limited Vs. Commissioner of Customs, New Delhi, 2014 (304) E.L.T. 660 (DEL.).

4. As a matter of fact, the writ petition filed seeking to declare that limitation provided for in the aforesaid notification is contrary to the Customs Act, was withdrawn today, in view of the judgement of the Division Bench of the Delhi High Court in Sony India's case.

5. In so far as the submission with regard to failure to grant personal hearing is concerned, the same appears to be correct, as the petitioner, while filing its refund claim in the prescribed format, against query No.12, had indicated that, it wants a personal hearing in the matter.

5.1. Furthermore, the petitioner has made the same submission in paragraph 16 of the affidavit accompanying the petition, which has not been rebutted by the respondents, in their counter affidavit filed with this court.

6. Accordingly, the impugned order is set aside. The respondents will reconsider the refund claim of the petitioner before passing any order in the matter.

6.1. The respondent will issue a notice, in writing, to the petitioner, fixing the date, time and venue for according hearing in the matter.

6.2. After affording hearing to the petitioner, the respondent will file a fresh order, albeit, in accordance with law.

7. Resultantly, the writ petition is disposed of, in the aforesaid terms. Consequently, connected miscellaneous petition is closed. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Ministry of Finance,
Government of India,
North Block,
New Delhi-110 001.
2. The Central Board of Excise & Customs,
Ministry of Finance,
North Block, New Delhi-100 001.
3. The Assistant Commissioner of Customs (Refunds),
Office of the Commissioner of Customs (Chennai-IV),
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

+1 cc to M/s.S.MuthuVenkataraman Advocate sr 75997

+1 cc to M/s.T.Pramod Kumar Chopda Advocate sr 74576

सत्यमेव जयते

W.P.No.36661 of 2015

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