

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27525 of 2016

M/s.Nizamabad Agro Private Ltd.,
Represented by its Director, Mr.Jugal Soni,
H.No.7-7-656, Gandhi Gunj,
Post Box No.61,
Nizamabad-503 001. (A.P.) ... Petitioner

Versus

- 1.The Assistant Commissioner of Customs - EODC,
Office of the Principal Commissioner of Customs,
Chennai VII - Air Cargo Commissionerate,
Integrated Cargo Complex, Meenambakkam,
Chennai-600 027.
- 2.The Deputy Commissioner of Customs - EPCG,
Office of the Principal Commissioner of Customs,
Integrated Cargo Complex, Meenambakkam,
Chennai-600 027.
- 3.The Assistant Commissioner of Customs (Group-7, ACC),
Office of the Commissioner of Customs,
Airport & Air Cargo, Meenambakkam,
Chennai-600 027. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, to direct the first respondent herein to refund the encashed amount of Rs.6,45,945/- to the petitioner-Company.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.Rajkumar Jhabakh,
Senior Standing Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel appearing for the petitioner and Mr.Rajkumar Jhabakh, learned Senior Standing Counsel appearing for the respondents. Perused the materials placed on record, including the written instructions given by the respondents to the learned Senior Standing Counsel.

direction to the first respondent to refund the encashed amount of Rs.6,45,945/-. The petitioner is engaged in the production of milled rice, including broken rice, and such produce is said to be sold locally and also through export. While effecting export of goods, the petitioner opted for the scheme, viz., Export Promotion Capital Goods (EPCG) for importing machinery at concessional rate of duty for the purpose of production of export goods. The petitioner-Company obtained a license for import of two series colour sorter and two feed chutes with essential spare parts from abroad at concessional duty of 5% in terms of Customs Notification No.55/2003, dated 01.04.2003. For the difference in duty involved to the tune of Rs.6,07,056/-, the petitioner executed a Bond and Bank Guarantee with the second respondent. In terms of the license conditions, the petitioner was required to export the broken rice and rice produced by use of the above machinery within 8 years. The third respondent through a letter dated 05.09.2011, addressed to the Central Bank of India, Nizambad, called upon them to pay the bank guarantee amount on the ground that the petitioner-Company did not fulfill the export obligation within the stipulated period and the Bank effected payment to the third respondent on 10.10.2011. Thereafter, the petitioner obtained a redemption letter from the licensing authority for completion of export obligations and placed it for consideration before the first respondent and requested for cancellation of the bond and bank guarantee and return the same. The first respondent accordingly stated that the bond and bank guarantee executed are duly cancelled against the submission of the export obligation discharge certificate / redemption letter dated 31.12.2015. Since the bank guarantee amount was already encashed in the year 2011, now the petitioner has filed this Writ Petition for return of the said amount.

3. The respondents do not dispute the factual contentions, but would state that if the petitioner had approached the Assistant Commissioner (Refunds) for the refund of the amount, the same would have been considered and refund will be effected as per law.

4. The question would be as to whether the petitioner has to be directed to approach the Assistant Commissioner (Refunds) or a direction to be issued to the first respondent.

5. The Hon'ble Division Bench of this Court in a case of Commissioner of Customs, Chennai Vs. M/s.Aristo Spinners Pvt. Ltd., reported in 2008-TIOL-87-HC-MAD-CUS, has considered the question, as to whether the refund of bank guarantee would amount to collection of tax and the Hon'ble Division Bench of this Court has held as follows:-

"6. In yet another case is Oswal Agro Mills Ltd., V. Assistant Collector of Central Excise, 1994 (2) SCC 546 also the Supreme Court has taken the same view to the effect that furnishing of bank guarantee pursuant to the order of the Court was not

equivalent to payment of excise duty and for the purpose of securing revenue in the event of the revenue succeeding in the proceedings before the Court, the Court as the condition of staying the demand in the disputed tax or duty imposed a condition that the assessee should provide a bank guarantee for the full amount of tax or duty or part thereof. The bank guarantee is the security for the revenue that in the event of the revenue succeeds, its due will be recoverable being backed up with the guarantee of the bank. The amount of disputed tax or duty that was secured by a bank guarantee could not therefore be held to be paid to the revenue. Thus, it is clear that the furnishing of bank guarantee cannot be regarded as payment of duty by the importer to the revenue. Section 27, which speaks about the refund of the duty paid cannot be pressed into service to deny the refund.

7. In an identical set of facts, this Court, in the case of Commissioner of Customs (Exports) Vs. M/s.Jraj Exports (P) Ltd., 2007 (3) TNLJ 532, in which one of us is a party, has held in favour of the importer. In that decision the decision of the Supreme Court in the case of Oswal Agro Mills Ltd. V. Assistant Collector of Central Excise, 1994 (2) SCC 546 has been taken in aid."

Therefore, the petitioner need not be called upon to approach the Assistant Commissioner (Refunds) and the first respondent himself can consider the petitioner's claim as the first respondent has cancelled the bond and bank guarantee on the petitioner producing the Export Obligation Discharge Certificate.

6. Accordingly, the Writ Petition is disposed of by directing the petitioner to submit a representation to the third respondent along with a copy of this order and the third respondent shall take note of the legal position and also the factual position and effect refund within a reasonable time, not later than eight weeks from the date of the receipt of the representation by the third respondent. No costs.

Sd/-
Asst.Registrar (CS)

/true copy/

Sub Asst. Registrar

To

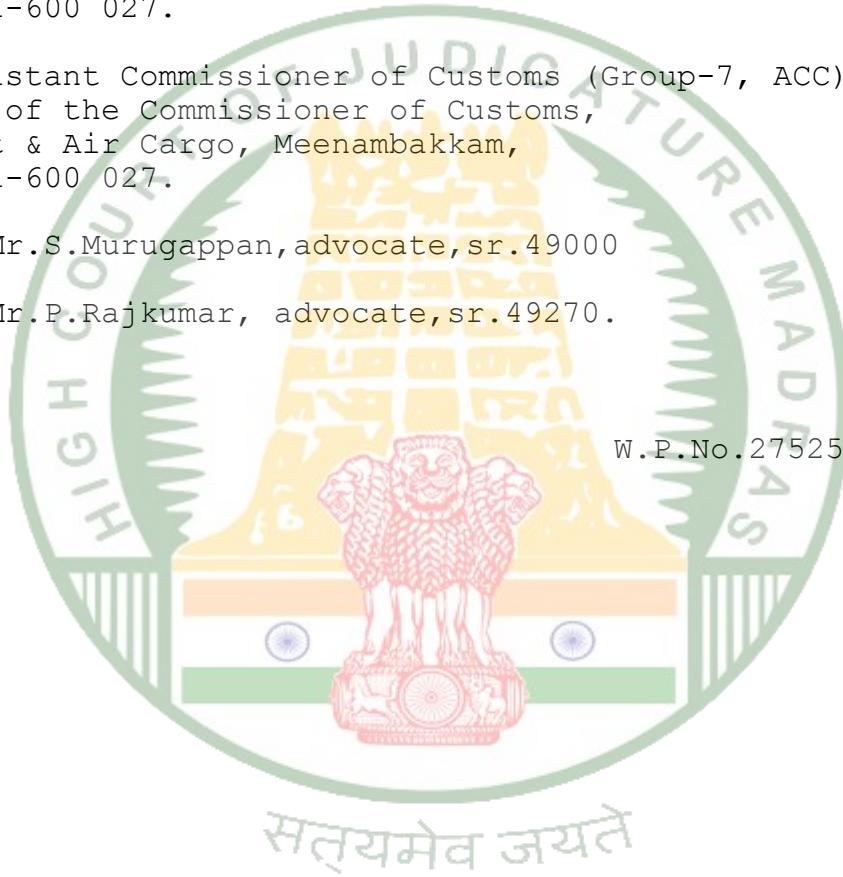
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+1 cc to Mr.S.Murugappan,advocate,sr.49000

+1 cc to Mr.P.Rajkumar, advocate,sr.49270.

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