IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.28188 of 2016
and
W.M.P.No.24323 of 2016

M/s.Kaleesuwari Refinery Pvt. Ltd.,
Represented by its Senior Manager - Legal
Mr.George Thomas
No.5, Mambakkam Road
Vengaivasal
Chennai - 73.

.. Petitioner

..Vs..

The Assistant Commissioner
Officer of the Assistant Commissioner of Central Excise
Tambaram Division
40, Ranga Colony, Rajakilpakkam
Chennai - 73.

.. Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent's Impugned Show Cause Notice No.02/2016 (Refund) dated 08.07.2016 bearing reference C.No.V/18/13/2016-RF and to quash the same and direct the Respondent to refund a sum of Rs.15,00,000/- to the petitioner forthwith together with interest at 6% from the date of pre-deposit till date of payment.

For Petitioner : Mr.C.Saravanan

For Respondent : Mr.A.P.Srinivas,
Senior Panel Counsel

ORDER

Heard Mr.C.Saravanan, learned counsel for the petitioner and Mr.A.P.Srinivas, Senior Panel Counsel appearing for the respondent and with the consent of either side, the writ petition itself is taken up for disposal.

2.The petitioner has filed this writ petition challenging the show cause notice issued by the respondent dated 08.07.2016 and to issue a consequential direction to refund a sum of Rs.15,00,000/- together with interest at the rate of 6% from the date of deposit till the date of payment.

3.The facts which are relevant for the disposal of the writ petition are that the petitioner preferred an appeal before the Hon'ble Division Bench of this Court in C.M.A.No.2092/2007 against the final order passed by the CESTAT in Final Order No.111/2007, dated 10.01.2007. At the time when the appeal was entertained by the Division Bench, a conditional order of stay was granted subject to the condition that the petitioner pays a sum of Rs.15,00,000/-. The petitioner has complied with the said condition and the learned counsel would invite the attention of this Court to the counterfoil issued by the concerned bank for remittance of the amount in two installments of Rs.10,00,000/- and Rs.5,00,000/- respectively.

4.By pointing out to the Sl.No. of the challan, the learned counsel submits that the computerized information available in the department website regarding the challan status matches with the serial number in the manual challan. Ultimately, the petitioner succeeded before the Division Bench of this Court and the appeal filed by them was allowed and consequently, the order passed by CESTAT was set aside.

5.Further, as on date, there is nothing on record to show that the revenue has preferred an appeal to the Hon'ble Supreme Court as against the said judgment dated 08.10.2015. As a consequence of succeeding before the Hon'ble Division Bench, the petitioner sought for refund of the said amount which was paid by them pursuant to the interim direction issued by the Division Bench in the above referred appeal.

6.The record of the proceeding shows that there is correspondence between the petitioner and the department. In fact the respondent has addressed the Manager of the Indian Bank, Velacherry Branch requesting for certain details. However, it is not known as to whether the bank has clarified or furnished the relevant information as sought for by the respondent in their letter dated 21.06.2016 [copy marked to the petitioner]. While the facts stood thus, the impugned show cause notice has been issued.

7.The learned counsel for the petitioner would invite the attention of this Court to the Circular No.984/08/2014, dated 16.09.2014 issued by the CBEC and submitted that even in case of pre-deposit, a simple letter from a person who has made such deposit requesting for return of the amount would suffice for refund. Further, it is submitted that in terms of Clause 5.1 of the circular, where appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with interest at prescribed rate from the date of making such deposit to the date of refund in term of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.

8.The learned counsel for the revenue pointed out that the impugned proceeding is only a show cause notice and if the petitioner has to seek for refund of the amount, then the refund claim has to be processed in accordance with law. All that has been requested to be furnished by the respondent is the particulars regarding the pre-deposit namely, the GAR challan. Therefore, if the petitioner submits the relevant documents, he would be entitled to the amount and the authority has to take a decision as to whether it is admissible and if admissible, whether the petitioner is entitled for interest.

9.After hearing the learned counsels for the parties and perusing the materials placed on records, it is evidently clear that the amount which has been paid by the petitioner is not strictly in the sense of pre-deposit, but it may be akin to one, as the same has been done pursuant to the interim order granted by the Division Bench of this Court. Having succeeded before the Division Bench, the petitioner is entitled to refund of the amount deposited.

10.In my view the insistence of GAR challan may not be necessary in the instant case, since the petitioner has been able to produce the tax paid voucher along with the challan status from the official website of the department. The Department can also make a verification from their accounts and double check as to whether the amount has been deposited. The payment challan clearly shows that the payment has been made pursuant to the interim order granted in M.P.No.1 of 2007 in C.M.A.No.2092 of 2007. Therefore, there can be little doubt as regards the refund of the amount.

11.So far as the interest portion is concerned, the petitioner has referred to circular which contemplates the payment of interest when pre-deposit is effected and the assessee succeeds in the appeal. There is no reason as to why such condition should not be imposed in the instant case also because what was deposited by the petitioner is akin to a pre-deposit as it has been done pursuant to the order passed by the Division Bench of this Court.

12.In this regard, useful reference can be made to the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd., reported in 2005 (179) E.L.T. 15 (S.C.), wherein a draft circular was shown to the Hon'ble Supreme Court which has ultimately resulted in issuance of various circulars and the latest being the circular dated 16.09.2014.

13.The learned counsel also placed reliance on the decision of this Court in the case of Arthanari Loom Centre v. Secretary, C.B.E. & C. reported in 2016 (332) E.L.T. 778 (Mad.) and the decision of the Calcutta High Court made in the case of Enterprise International Ltd., v. Commissioner of Customs (Port) reported in 2012 (281) E.L.T. 47 (Cal.).

14.In the light of the above discussions, the present writ petition is disposed of by directing the respondent to consider the documents placed by the petitioner namely, the payment voucher and the information regarding the challan status as culled out from the website of the department and verify the records maintained by the department and thereafter, effect refund of the amount paid by the petitioner. So far as the demand for interest at the rate of 6% is concerned, the respondent is directed to take note of the law as pointed out in the preceding paragraphs and pass orders on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner
Officer of the Assistant Commissioner of Central Excise
Tambaram Division
40, Ranga Colony, Rajakilpakkam
Chennai - 73.

+1cc to Mr.C.Saravanan, Advocate Sr.47676
+1cc to Mr.A.P.Srinivas, Advocate Sr.47566

W.P.No.28188 of 2016
and
W.M.P.No.24323 of 2016

pvs[co]
srg 09/09/2016