IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2016

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.32277 of 2016

M/s.Hypertherm (India) Thermal Cutting Private Limited, represented by its Director Mr.Kotagiri Pramod Kumar,
New No.83, Old No.52, Bazullah Road,
T.Nagar, Chennai-600 017. .. Petitioner

Vs

Deputy Commissioner of Service Tax, III Division,
Service Tax II Commissionerate,
Plot N.2054, I Block, 12th Main Road,
II Avenue, Anna Nagar,
Chennai-600 040. .. 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 relating to the order in Original No.36 to 48/2016(R) dated 28.06.2016, passed by the respondent, quash the same as arbitrary and illegal and to direct the respondent to refund the amount.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.R.Sunder, SGSC

ORDER

1. This is a writ petition, whereby, challenge is laid to the order dated 28.06.2016, passed by the respondent.

2. By the impugned order, the respondent has rejected the refund claims made by the petitioner, which number thirteen (13), in all and cumulatively, amount to a sum of Rs.21,24,338/-.

2.1. The thirteen (13) refund claims, which were preferred by the petitioner, pertain to a period spanning from 23.07.2013 to 27.04.2016. For the sake of convenience, the details pertaining to the refund claims, as set out in paragraph 2 of the impugned order, are set forth hereinafter :

Sl. No.	Refund Claim Filed on	Refund claim for the period	Amount of the claim	SCN No.	SCN Date
1	23.07.13	Jul to Sep'12	151254	SCN No.01/2015 (R)	15.06.2015
2	29.10.13	Oct to Dec'12	152893	SCN No.02/2015 (R)	15.06.2015
3	29.10.13	Jan to Mar'13	161614	SCN No.03/2015 (R)	15.06.2015
4	28.04.14	Apr to June'13	126414	SCN No.04/2015 (R)	15.06.2015
5	28.04.14	Jul to Sep'13	201681	SCN No.05/2015 (R)	15.06.2015
6	29.10.14	Oct to Dec'13	252422	SCN No.06/2015 (R)	15.06.2015
7	29.01.15	Jan to Mar'14	240800	SCN No.07/2015 (R)	15.06.2015
8	24.04.15	Apr to Jun'14	134766	SCN No.08/2015 (R)	15.06.2015
9	24.04.15	Jul to Sep'14	149856	SCN No.09/2015 (R)	15.06.2015
10	28.10.15	Oct to Dec'14	137742	SCN No.10/2015 (R)	26.05.2016
11	28.10.15	Jan to Mar'15	137407	SCN No.11/2015 (R)	26.05.2016
12	27.04.16	Apr to Jun'15	123636	SCN No.12/2015 (R)	26.05.2016
13	27.04.16	Jul to Sep'15	153853	SCN No.13/2015 (R)	26.05.2016
			21,24,338		

2.2. As would be evident from the table set out above, in respect of thirteen (13) refund claims, thirteen (13) show cause notices were issued, out of which, nine (9) show cause notices bore the date 15.06.2015, while the remaining four (4) are dated 26.05.2016.

2.3. It is not disputed before me that the petitioner filed replies, in respect of the aforementioned show cause notices. It is also not disputed before me that a personal hearing in the matter was granted by the respondent. It is only after this exercise was conducted by the respondent, that the impugned order came to be passed.

3. Therefore, in these circumstances, I have put to the learned counsel for the petitioner as to whether it was a case, in which, this Court ought to interfere with the impugned order, in exercise of its power under Article 226 of the Constitution.

3.1. Mr.Prabakar, learned counsel for the petitioner, submits that it was indeed a case, in which, interference under Article 226 of the Constitution, was required, as there had been a breach of the principles of natural justice.

3.2. Broadly, Mr.Prabakar submitted that the principles of natural justice were breached, on account of three (3) counts : (i) the impugned order was a non-speaking order; (ii) all thirteen (13) claims had been disposed of, by one single order; and (iii) lastly, a mandatory duty was cast on the respondent, in terms of Circular dated 19.01.2010, to dispose of the refund claims within a period of thirty (30) days of their receipt.

4. Mr.S.R.Sunder, learned Senior Government Standing Counsel, who appears for the respondent, however, argues to the contrary.

4.1. Mr.Sunder, says that, while, there has been a delay in the disposal of refund claims, that, by itself, cannot be the reason for this Court to interfere with the impugned order, as the matter has been disposed of on merits, which can be tested before an appellate forum.

4.3. In sum, Mr.Sunder says that this is not a fit case for this Court to interfere with the impugned order under Article 226 of the Constitution.

5. I have heard the learned counsel for the parties and perused the record.

6. The burden of the impugned order passed by the respondent is that the situs of the services provided by it is in India. The petitioner had, on the other hand, preferred refund claims, principally, on the ground that it was entitled to cenvat credit on input services provided by it to overseas entities. The petitioner claims that the services, that it provides for its principal, which is located in Singapore, relate to providing market research; product training for group's Indian customers; marketing services; and, development of business plans with Group's Indian Customers and identification of prospective customers. It is, therefore, the contention of the petitioner that the situs of the services offered by the petitioner to its groups is not in India.

6.1. It is, in this context, that the learned counsel for the petitioner says that the reasoning given in the impugned order is so cryptic, and that, it amounts to a non-speaking order. For this purpose, my attention has been drawn to paragraph 12 of the impugned order.

7. I have perused the impugned order. A perusal of the same would show that the respondent has taken up each item of the composite services that the petitioner claims to have offered to its principal, and then, attempted to indicate as

to why that component of the service, which, the petitioner offers to its Singaporean Principal, has its situs in India. It is, because, the respondent has taken up, as indicated above, each component of the service provided by the petitioner, that it appears that the reasoning is cryptic.

8. In my view, though, the impugned order may be brief, but it is not a non-speaking order, as portrayed by the counsel for the petitioner. A speaking order is a one, via which, an Adjudicator rightly or wrongly, based on his logic or rationale, comes to a definitive conclusion, after perusing the material placed before him.

8.1. Clearly, the respondent has jurisdiction in the matter. Once, the respondent, has the requisite jurisdiction in the matter, he has also the jurisdiction to decide rightly or, even wrongly. A wrong decision, to my mind, can be corrected by the appropriate statutory forum provided under the relevant statute and, would not, necessarily require interference by a writ Court, in exercise of its powers under Article 226 of the Constitution of India. It is not disputed before me that an appellate remedy is available to the petitioner. Therefore, to my mind, the tenability of the impugned order can be examined on merits by the concerned forum. (See Ujjam Bai V. State of U.P., 1963 (1) SCR 778 : AIR 1962 SC 1621)

9. Insofar as other aspect is concerned, which is that, the respondent did not decide the refund applications, as was required in paragraph 4 of the Circular dated 19.01.2010, within thirty (30) days, is an aspect, which could have been examined, had the petitioner shown alacrity in approaching this Court. The petitioner, instead, allowed the show cause notices to be adjudicated upon; the resultant grief caused has its roots in its own inaction.

9.1. Furthermore, Mr.Prabakar, learned counsel for the petitioner, on being queried, has submitted before me that there is a provision for payment of interest. Therefore, delay, if any, found attributable to the respondent could, perhaps, be compensated, if and when, the petitioner's contention on merits is upheld by the concerned forum.

10. This brings me to the last assertion, that is, that the thirteen (13) refund claims were rejected by a common order. According to me, this cannot, by itself, be a reason for interference by this Court. The concerned appellate forum, while examining the merits of the matter, will, I am sure, look at the substance of the reasoning, and then, decide, whether or not the impugned order ought to be sustained or not.

11. Therefore, taking a holistic view of the matter, I am of the opinion that, since, an order on merits has been passed, it would have to be assailed in the given circumstances, before the concerned appellate authority.

12. Accordingly, I am not inclined to interfere with the impugned order, in exercise of my powers under Article 226 of the Constitution.

12.1. Needless to say that, if, the petitioner were to take recourse to an alternate remedy, the concerned appellate authority would decide the appeal with due expedition, uninfluenced by the fact, that this Court has not interfered with the impugned order.

13. Accordingly, the writ petition is disposed of for the reasons given above. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

The Deputy Commissioner of Service Tax,
III Division, Service Tax II Commissionerate,
Plot N.2054, I Block, 12th Main Road,
II Avenue, Anna Nagar,
Chennai-600 040.

1 cc to Mr. Joseph Prabakar, Advocate, Sr. 73466
1 cc to Mr.S.R. Sundar, Advocate, Sr. 73353

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RSY (CO)
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