

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

W.P.No.21090 of 2014

M/s.Glovis India Pvt Limited
Rep. by N.Srikanth

Authorised Agent, F 98, 8th Main Road,
SIPCOT Industrial Park, Irungattukottai,
Kattrampakkam Village, Sriperumbudur Taluk,
Kancheepuram District

... Petitioner

Vs

- 1.The Deputy Registrar
CESTAT (South Zone Bench)
6, Shastri Bhavan Annexe Building
Haddows Road, Chennai-600 006
 - 2.The Commissioner of Central Excise (Appeals)
Central Excise Building
26/1, Mahatma Gandhi Salai, Chennai-600 0343.
 - 3.The Commissioner of Central Excise
Chennai-IV Commissionerate
692, MHU Complex, Nandanam
Anna Salai, Chennai-600 035
 - 4.The Deputy Commissioner of Central Excise
Poonamallee Division
Chennai IV Commissionerate
C-48, TNHB Building, Annanagar,
Chennai-600 040
 - 5.The Inspector of Police, Anti Corruption Branch
Central Bureau of Investigation,
Chennai-600 008
- ... Respondents

Writ Petition filed praying to issue a writ of mandamus directing the learned Principal Special Judge for CBI Cases (XIII Additional Judge), Chennai to keep in abeyance the proceedings in C.C.No.49 of 2013 on his file, until the matter whether the petitioner's company is a manufacturer or not within the meaning of Section 2(f)(iii) of the Central Excise Act, 1944, and Scheduel III of the Central Excise Tariff Act, 1985, attains finality.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.K.Raju, CGCC for R1
Mr.A.P.Srinivas for R3 and R4
M/s.K.Mohana murali and
Mr.N.Chandrakumar for R5

ORDER

The Petitioner herein, incorporated as a Private Limited Company, is a group company of Hyundai Motors, is doing its business and handles export, transportation of cars and involved in procurement of components required for manufacture of car and the packed in kits are known as CKD Kits (Completely Knocked Down) and the kits so packed are exported to Hyundai Assan Otomotive Sanayi, Turkey.

2. The petitioner states that they submitted an application dated 19.08.2009 for the registration as a manufacturer with Central Excise Department for the Manufacturing CKD Kits of automobiles and Electronic Control Units under Rule 9 of the Central Excise Rules 2002 issued by the Central Board of Excise and custom. The Central Excise Department, Poonamallee Division, had issued Central Excise Registration Certificate to the petitioner-company for manufacturing of excisable goods on 26.08.2009 and registration number. The petitioner further states that they were procuring through inland sources components for manufacture of CKD Kits falling under Chapter 8708 of the Central Excise Tariff Act, 1985, by paying excise duty and such goods post the CKD operation are exclusively exported by the petitioner under self-certification under the cover of Form ARE-1. The petitioner has been availing the CENVAT credit of the duty paid on the Excisable goods exclusively used in the Export Goods. According to the petitioner, the manufacturing activity undertaken by the petitioner involves sourcing of duty paid automobile component from various manufacturers, which are unpacked and treated for anti-rusting (wherever required) and re-packed into kits consisting of components and re-labelling them for export. This activity is a manufacturing activity falling within the meaning of Sec.2(f) (iii) of Central excise Act, 1944 read with Schedule III of the Central Excise Tariff Act, 1985 and in the present case, as the petitioner is engaged in processing and packing of the goods in the manner required by the customer, it is clear that the said process amounts to manufacture within the meaning of Section 2 (f) (iii) of Central Excise Act, 1944.

3. It is stated that the petitioner paid excise duty on the export goods at the time of their removal from the factories and in terms of Rule 18 of the Central Excise Rules 2002, duty paid on exports can be claimed as rebate to the total extent of Rs.1,49,69,821/-. The 4th respondent disputing the availability of the rebate claim on the ground that the process adopted by the petitioner does not amount to "manufacture", issued a Show cause notice No.85 of 2011 dated 8/8/2011 to the petitioner. The petitioner replied to the show cause notice and also appeared for a personal hearing on 09/10/2011 and by the Order-in-Original No.23/2011 dated 14.11.2011, the 4th respondent granted refund of duty paid on inputs/components under Rule 18 of CER, 2002 read with Notification No.21/2004-CE(NT) dated 6/9/2004, which according to the petitioner the Notification Number was wrongly emntioned in the said order in original as 19/20040C(NT) dated 6/9/2004. Aggrieved by the said order, the petitioner has preferred an appeal No.4/2012 on 12.01.2012 before the 2nd respondent on the ground that the rebtate claim ought to have been sanctioned by the 4th respondent in full. The Department too has preferred an appeal before the 2nd respondent contending that the petitioner is not entitled to the refund at all due to the reason that the procedure prescribed under Notification No.21/2004 CE(NT) dated 6.9.2004 was not followed. According to the petitioner, their subsequent claims were not taken up for processing by the 4th respondent, hence, the petitioner filed W.P.No.7008/2012 wherein, this court directed the 4th respondent to take up the claims and pass final order. Thus, another set of 3 claims dated 18.1.2012 and 29.5.2012 were also filed by the petitioner covering the period September 2011, November 2011 and December 2011 before the 4th respondent. The 4th respondent, by Order-in-Original, rejected the major portion of the claim and allowed certain claims. Aggrieved by the said orders, the petitioner filed Appeal No.29/2013 before the 2nd respondent and the department also filed appeal. The 3rd respondent vide his order in original dated 31.12.2012 has confirmed the demand. Aggrieved over the said order, the petitioner has filed an appeal before the CESTAT and by interim order dated 01.08.2013 stayed the recovery of the tax demanded. It is also stated that upon a complaint, the respondent initiated a Criminal Investigation stating that the rebate was allowed fraudulently and dishonestly by cheating and making false representations to gain undue pecuniary advantage through corrupt and illegal means while processing the claim application of the petitioner and thereby committed offence punsiable under Section 120-B IPC r/w.420 IPC and 13(2) r/w.13(1) of Prevention of Corruption Act, 1988 and registered a case in C.C.No.49/2013 on the file of Principal Special Judge for CBI cases, Chennai. The plea of the

petitioner herein is untill the proceedings in the Appeals preferred by them before the 2nd respondent/department, is finally disposed of, the proceedings pending in C.C.No.49 of 2013, may be directed to be stayed.

4. The learned counsel appearing for the respondents relied upon the Ruling of the Supreme Court in the case of State (NCT of Delhi) Vs. Ajay Kumer Tyagi reported in (2012) 3 Supreme Court Cases (Crl) 1221, wherein, in paragraph No.24, it is held as follows:-

"Therefore, in our opinion, the High Court quashed the proceedings on total misreading of the judgment in P.S.Rajya case. In fact, there are precedents, to which we have referred to above, that speak eloquently a contrary view i.e, exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in a department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the inquiry officer based on those evidence.

25. We are therefore of the opinion that the exoneration in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further, they are not in the same hierarchy. "

5. Thus the respondents counsel contends that the proceedings in CESTAT and the proceedings in trial court are two different entitles and those proceedings can go on simultaneously and there is no bar for the same and if the petitioner/accused herein gets a favourable finding in the

proceedings before the CESTAT, the same can be relied upon by him in the criminal proceedings, pending before the trial court and as such, there is no need to entertain the plea of the petitioner to stay the proceedings pending in C.C.No.49 of 2013 on the file Principal Special Judge for CBI Cases (XIII Additional Judge), Chennai.

6. I have perused the entire records and considered the rival submissions made by the parties herein and gone through the rulings relied upon by the respondents. Following the above stated Ruling reported in (2012) 3 Supreme Court Cases (Crl) 1221, (cited supra), I am of the considered view that the criminal proceedings pending before the trial court shall go on and there is no need to entertain the plea of the petitioner to stay the proceedings in C.C.No.49 of 2013.

7. Further, as held by the Supreme Court, the criminal case is decided on the basis of evidence adduced therein and cannot be rejected on the basis of evidence in departmental proceedings and therefore, both proceedings pending before the CESTAT and the trial court shall go on simultaneously and there is no impediment for the same.

8. Both sides counsel conceded that it is suffice to direct the CESTAT to dispose of the matter within the prescribed time limit, to be fixed by this court. The learned counsel appearing for the CESTAT submits that 4 months time may be granted to the CESTAT to dispose of the appeals pending before it.

9. Taking into consideration the above said factors and the other attendant circumstances, R1-CESTAT is directed to dispose of the pending appeals before it within a period of 3 months from the date of receipt of a copy of this order. While directing the CESTAT to dispose of the pending appeals preferred by the petitioner, I am of the considered view that there is no need to stay the proceedings of the trial court pending in C.C.No.49 of 2013 as sought for by the petitioner for the reasons stated above.

10. The Writ Petition is disposed of with the above observation. No costs. Registry is directed to communicate the order to the CESTAT immediately.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Deputy Registrar
CESTAT (South Zone Bench)
6, Shastri Bhavan Annexe Building
Haddows Road, Chennai-600 006
 - 2.The Commissioner of Central Excise (Appeals)
Central Excise Building
26/1, Mahatma Gandhi Salai, Chennai-600 0343.
 - 3.The Commissioner of Central Excise
Chennai-IV Commissionerate
692, MHU Complex, Nandanam
Anna Salai, Chennai-600 035
 - 4.The Deputy Commissioner of Central Excise
Poonamallee Division
Chennai IV Commissionerate
C-48, TNHB Building, Annanagar,
Chennai-600 040
 - 5.The Inspector of Police, Anti Corruption Branch
Central Bureau of Investigation,
Chennai-600 008
- +2cc's to Mr.S.Sathia Chandran, Advocate, S.R.No.3520
+1cc to Mr.K.Raju, Advocate, S.R.No.3511
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.3524

W.P.No.21090 of 2014

ALA(CO)
CA(01/02/2017)

WEB COPY