IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.31189 of 2017

M/s.India Trimmings (P) Ltd.,
100% EOI, Pillaiappampalayam,
Telungupalayam Post,
Annur, Coimbatore - 641 653
(Represented by K.Vijayakumar,
Director of M/s.India Trimmings (P) Ltd. .. Petitioner

..Vs..

The Assistant Commissioner of Central Excise,
Tirupur Division, 1st Floor,
Kumaran Shopping Complex,
Tirupur. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in Order in Original Sl.No.25/2017 dated 06.11.2017 and quashing the impugned order to the extent i.e. rejects the refund claim of Rs.2,79,826/-.

For Petitioner : Ms.D.Naveena
For Mr.S.Durairaj

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

O R D E R

Heard Ms.D.Naveena, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel appearing for the respondent. With the consent on either side, the writ petition is taken up for disposal.

2.One more reason for taking the writ petition for disposal even without waiting for counter affidavit is on account of the glaring error which is apparent on the face of the impugned order. It may not be necessary for this Court to go deep into the factual aspects as the impugned order has been challenged by the petitioner on the ground that it is in violation of the principles of natural justice.

3.The petitioner who is a 100% Export Oriented Unit, is engaged in manufacturing of Decorative Ornamental Trimmings falling under Chapter 58089090 of Central Excise Tariff Act, 1985 without payment of duty under Bond. The petitioner has been availing CENVAT credit of duty paid on inputs and service tax paid on input services in terms of CENVAT Credit Rules, 2004. The petitioner filed a refund claim under Rule 5 of the CENVAT Credit Rules on 11.08.2017 under Notification No.27/2012 ST dated 18.06.2012 for refund of unutilized service tax credit amount of Rs.4,93,532/- for the period from April 2017 to June 2017. The petitioner contended that they are taking credit of service tax paid by them on different services of the Finance Act, 1994 received and not utilized by them in connection with exports of their goods. The claim was taken up for verification by the respondent and found that the documents were in order, the refund claim is not hit by time barred and the petitioner is eligible for the benefit under Notification No.27/2012. However, after rendering such a finding the respondent has calculated the refund claim eligible under two tabular columns. First of which being ineligible calculation for amount and the second is the details of ineligible credit. After mentioning the details of ineligible credit, the respondent has proceeded to pass the impugned order whereby sanctioned refund of RS.2,13,706/- and rejected the claim to the extent of Rs.2,79,826/-.

3.On a reading of the impugned order, it is not clear as to why the respondent has rejected the claim of refund of Rs.2,79,826/-. The only reason stated is "non-fulfillment of the conditions". However, this may not suffice since the petitioner is entitled to put forth their objections with regard to the stand taken by the respondent that a portion of the refund claim is not eligible. The petitioner has been periodically making such claims and in such one case, the issue arose is as to whether the petitioner would be entitled for the benefit of CENVAT credit of input services. The case ultimately was settled by the CESTAT in its order dated 16.12.2015 in Final Order No.41701/2015 and order dated 01.04.2016 in Final Order No.40567/2015. Subsequently the petitioner's liability for the benefit of CENVAT credit for input services has not been disputed by the respondent and orders in original dated 29.04.2016, 07.12.2016, 12.05.2017 and 19.07.2017 have been passed wherein the entire refund claim has been sanctioned. For the first time, the petitioner's claim for refund dated 11.08.2017 has been partially sanctioned.

4.Learned counsel for the petitioner would submit that the orders passed by the CESTAT as well as the appellate authority is binding upon the respondent in the light of the decision in the case of Union of India vs. Kamalakshi Finance Corporation reported in 1991 (55) ELT 433 (SC).

5.As pointed out earlier, the respondent did not afford an opportunity to the petitioner while rejecting the part of the refund claim and having not done so, it affects the very validity of the order and making it liable to be set aside on the ground of violation of principles of natural justice. Thus, for the above reasons this Court is inclined to issue appropriate directions so that the petitioner gets an opportunity to put forth their contentions before the respondent.

6.Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as show cause notice in so far as the refund claim of Rs.2,79,826/- and submit their objections within a period of thirty days from the date of receipt of a copy of this order, after which the respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and pass fresh orders with regard to the claim for refund to the extent of Rs.2,79,826/-. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner of Central Excise,
Tirupur Division, 1st Floor,
Kumaran Shopping Complex,
Tirupur.

+1cc to Mr.S.Durairaj, Advocate, S.R.No.85189
+1cc to Mr.A.P.Srinivas*, Advocate, S.R.No.85622

W.P.No.31189 of 2017

SS(CO)

RRK(18/12/2017)