IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2017

Coram:

The Hon'ble Mr. Justice T.S. Sivagnanam

W.P.No. 21633 of 2017
and
W.M.P.No. 22645 of 2017

M/s. Glovis India Limited,
Rep. by its COO and Authorized Officer, A.V. Ramana
F-98, 8th Main Road,
SIPCOT Industrial Park,
Kattrambakkam Village,
Sriperumbudur,
Kancheepuram District,
Tamil Nadu - 602 105. ...Petitioner

Versus

1. The Commissioner of Central Tax and Central Excise (Outer)
Newry Sonex Towers,
2nd Avenue, 12the Main Road, L Block,
Anna Nagar West, Anna Nagar,
Chennai - 600 040.

2. The Assistant Commissioner of Central Tax and Central Excise,
Irrungattukottai Division,
Chennai Outer Commissionerate,
C-48, TNHB Building,
Anna Nagar, Chennai - 600 040. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of mandamus directing the respondents to dispose the Rebate Application after hearing the Petitioner on the Show-Cause Notices SCN No.11/2012-RF, dated 03.10.2012, SCN No.12/2012-RF, dated 10.10.2012, SCN No.13/2012-RF, dated 10.10.2012, SCN No.13/2013-RF, dated 26.04.2013, SCN No.12/2013-RF, dated 26.04.2013, SCN No.15/2013-RF, dated 26.04.2013, SCN No.14/2013-RF, dated 26.04.2013, SCN No.23/2013-RF, dated 28.06.2013, SCN No.24/2013-RF, dated 28.06.2013, SCN No.25/2013-RF, dated 28.06.2013, SCN No.22/2013-RF, dated 28.06.2013, SCN No.01/2014-RF, dated 29.01.2014 issued by the second respondent on the rebate claims after considering the ratio laid down by the Hon'ble CESTAT vide their Order No.40787/2017 dated 15.05.2017 on a time period fixed by this Hon'ble Court and in accordance with law.

For Petitioner : Mr. J.V. Niranjan

For Respondents : Mrs. R. Hemalatha,
Senior Panel Counsel

ORDER

Heard Mr. J.V. Niranjan, learned counsel appearing for the petitioner and Mrs. R. Hemalatha, learned Senior Panel Counsel appearing on behalf of the respondents.

2. With the consent of the learned counsel on either side, the writ petition is taken up for final disposal.

3. The petitioner seeks for a direction upon the second respondent to dispose of the Rebate Application, after finally adjudicating the Show Cause Notices issued to the petitioner, in the light of the decision of the CESTAT dated 15.05.2017. The respondent issued show cause notices to the petitioner dated 03.10.2012, 10.10.2012, 26.04.2013, 28.06.2013 and 29.01.2014. The contents which are identical, in the sense that, the respondent proposed that the process undertaken by the petitioner, having been found to be not involving in an activity of manufacture, within the meaning of Section 2(f)(iii) of Central Excise Act, 1944 and the goods, being not processed in the factory, which does not amount to manufacture, as per section 2(f)(iii) of the Act, the petitioner was called upon to explain as to why their rebate claim should not be rejected under Section 11 (A) of the Central Excise Act read with Section 11(B) of the Act.

4. The petitioner submitted their replies to the Show Cause Notices inter-alia contending that the company is entitled to the benefit of the rebate under Rule 18 of the Central Excise Rules and that they do not have separate streams of procurements and utilization for duty free components and duty paid components. The petitioner made elaborate submissions on facts as well as on the merits of the allegations made in the Show Cause Notices and requested that the rebate may be granted to them and prayed for an opportunity of personal hearing.

5. Though these replies to the Show Cause Notices were submitted within the time permitted, i.e., during the year 2012-13 and 2013-14, the second respondent did not adjudicate the Show Cause Notices, but kept the matter pending without even keeping the Show Cause Notices in the call book. The reason being that the issue relating to whether the petitioner is entitled for the rebate was decided against the petitioner, in yet another Show Cause Notice and ultimately, the matter was

taken up on appeal before the CESTAT, challenging the order passed by the Commissioner of Central Excise, Chennai-IV in Order in Original dated 31.12.2012.

6. The Tribunal, after considering the case of the petitioner, as well as that of the Revenue, by order dated 15.05.2017 held that the activities under taken by the petitioner amounts to manufacture and they are liable to avail CENVAT credit on the inputs/input services used in the export of goods. Thus the impugned order before the Tribunal, demanding to recover/reversal of the credit was held to be unjustified and was accordingly set aside.

7. On obtaining the copy of the order passed by the CESTAT, the petitioner addressed the adjudicating authority by way of a representation/additional reply dated 28.06.2017. In the said reply, which dealt with all the 15 Show Cause Notices, the petitioner stated that they were issued a notice dated 24.07.2012 seeking reversal of credit availed on inputs used for manufacture of CKD kits (Completely Knocked Down). On the ground that their activities do not amount to manufacture. The said notices were confirmed by the adjudicating authority and affirmed in appeal by the Commissioner, which was challenged before the CESTAT and the CESTAT by the order dated 30.05.2017 set aside the Order in Original on the ground that the activities performed by the petitioner amounts to manufacture . Therefore the petitioner submitted that the issue raised in the 15 Show Cause Notices issued between October 2010 to December 2012 stands settled by the order passed by the CESTAT and requested the adjudicating authority to consider their rebate claims with due interest and sanction the same. These representation/further reply has been received in the office of the second respondent on 30.06.2017, as could be seen from the date and seal affixed in the copy of the reply. The other reply was received on 10.07.2017.

8. The learned counsel for the petitioner would submit that the order passed by the CESTAT, having become final, the respondent should be directed to consider their claim for rebate and pass appropriate orders thereon, including the claim for interest.

9. The learned Standing Counsel appearing for the Revenue submitted that the CESTAT passed the orders only on 15.05.2017 and it is not known as to whether the department intends to prefer an appeal as against the order and therefore at this juncture, this Court may not issue any positive direction.

10. The submission made by the learned standing counsel for the Revenue merits consideration, as it is not known whether the department intends to prefer an appeal, as against the order passed by the CESTAT. However, as rightly pointed out by the learned Counsel for the petitioner, unless and until, the department files an appeal before this Court and obtains an order of interim stay, the petitioner is entitled to the benefits, which flow from the order passed by the CESTAT. In any event, the petitioner cannot be keep guessing and they should know as to where they stand. This Court is not inclined to issue any positive direction at this juncture for more than one reason.

11. Firstly, the writ petition is disposed of at the admission stage itself and secondly it is not known whether any appeal is being preferred or has been preferred against the order passed by the CESTAT. One more factual aspect that has to be pointed out is that the petitioner did not take any steps to seek for early adjudication of the Show Cause Notices, though they were issued between October 2010 and December 2012 and immediately after succeeding before the Tribunal, they cannot seek for a direction to the second respondent to finally adjudicate the Show Cause Notices, as it appears that appeal time is yet to be over.

12. Thus for all the above reasons, the following order would meet the ends of justice:

> The second respondent/adjudicating authority is directed to take note of the petitioner's representations dated 28.06.2017, 10.07.2017 and 21.07.2017 and pass appropriate orders on merits and in accordance with law and intimate the same to the petitioner within a period of five weeks from the date of receipt of a copy of this order. If the department is inclined to accept the decision of the CESTAT, then the second respondent shall commence adjudication of the Show Cause Notices, afford an opportunity of personal hearing to the petitioner and pass appropriate orders in that regard and such adjudication shall be completed within a reasonable time.

With the above directions, this writ petition is disposed of. Consequently connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Central Tax and Central Excise (Outer)
   Newry Sonex Towers,
   2nd Avenue, 12the Main Road, L Block,
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   Chennai - 600 040.

2. The Assistant Commissioner of Central Tax and Central Excise,
   Irrungattukottai Division,
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   C-48, TNHB Building,
   Ananagar, Chennai - 600 040.

+1 CC to Mr.R. Hemalatha, Advocate sr 59249
+2 Ccs to Mr. J.V. Niranjan, Advocate sr 59119.

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SP(05/09/2017)