IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13253 of 2017
and
W.M.P.No.14240 of 2017

M/s.CMS Info System Ltd.
SP-8 Ambattur Industrial Estate,
Ambattur,
Chennai - 600 058. ..Petitioner/Petitioner

Vs.

1. The Assistant Commissioner of
Customs (Refunds),
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2. The Commissioner of Customs (Appeals-II),
Customs House,
60, Rajaji Salai, Chennai- 600 001.

R3.The Chief Commissioner of Central Excise,
26/1, Mahathma Gandhi Road, Chennai-34.

R4.
The commissioner of Central Excise,
Chennai-IV, 92, MHU Complex, Nandanam,
Anna Salai, Chennai-35. ..Respondents /Respondents

R3 & R4 impleaded as per Order dated
25.07.2017 in WMP.No.15993/17
in WP.13253/17

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus to quash the impugned Order-in -Appeal C.Cus II No. 333/2017 dated 10.04.2017 and direct the first respondent to process the refund claim pertaining to SR No. 660 dated 15.02.2015 and thereafter forward the same to the proper officer.

For Petitioner : Mr.S.Muthuvenkataraman

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

O R D E R

Heard Mr.S.Muthuvenkataraman, learned counsel for the petitioner and Ms.Hemalatha, learned Senior Standing Counsel appearing for the respondents.

2. The petitioner has impugned the order passed by the Commissioner (Appeals) dated 10.04.2017, rejecting the petitioner's appeal petition, filed against an order passed by the Assistant Commissioner (Refunds), dated 24.01.2017.

3. The petitioner filed a refund claim of SAD in terms of Notification dated **24.01.2007,*** before the Refund Department of the Chennai IV Commissionarate. The said application was returned vide the impugned communication dated 21.4.2017, with a direction to the petitioner to approach the appropriate authority. When this order was put to challenge, the Commissioner (Appeals) held that the communication returning the claim without processing is correct and when the Refunds department does not have jurisdiction over the subject refund claim, it does not have any authority/locus standi to take up such a claim for processing. Therefore, held that the only way out is either to reject the claim or to return the claim to enable the claimant/appellant to file the same before the appropriate jurisdictional authority.

4. The Commissioner (Appeals) found that the Assistant Commissioner (Refund), having chosen to return the claim, the said communication is legal and proper. Consequently, the appeal petition was rejected, as the Assistant Commissioner (Refund) had only returned the petitioner's claim.

5. When the writ petition came up earlier, this court directed the learned Senior Standing Counsel for the Revenue to obtain written instructions from the respondents as to, who will be the proper officer to entertain the refund claim of the petitioner. Accordingly, Assistant Commissioner of Customs (Refunds/Sea) has given a written communication dated 31.07.2017, stating that the Assistant /Deputy Commissioner of Customs, Chennai VII Air Cargo Commissionerate is the proper officer to deal with the refund claim. Thus, taking note of the

fact that the matter has to be dealt with the proper officer, this Court is inclined to issue appropriate direction in this regard.

6. Learned Senior Standing Counsel for the respondents would submit that the petitioner may be directed to approach the proper officer and file claim. When the department finds that the refund claim had been made before the incorrect authority, the proper course and the reasonable approach that should have been adopted is to forward the papers to the proper officer with due intimation to the petitioner. Unfortunately, that was not done in the instant case. Therefore, this Court is inclined to issue appropriate directions.

7. Accordingly, the writ petition is allowed and the impugned order is set aside, by directing the petitioner to re present the refund claim dated **15.02.2016,*** which was returned to the petitioner and received by them on 25.01.2017 to the Assistant/Deputy Commissioner of Customs Chennai VII Air Cargo Commissionerate, within a period of one week from the date of receipt of copy of this order and the said authority is directed to process the refund claim by reckoning the date of application as 15.02.2016 for all purposes. Since the said authority is not a party to the writ petition, the Registry is directed to communicate a copy of this order to the Assistant/Deputy Commissioner of Customs, Air Cargo Commissionarate, Chennai-1. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)
dt. 24.08.2017

Corrected as per order
dated 24.08.2017
in WP.13253/17

Sd/-
Assistant Registrar(CS III)
dt. 07/09/2017

//True Copy//

Sub Assistant Registrar

svki/sli

To

1. The Assistant Commissioner of
   Customs (Refunds),
   Customs House,
   60, Rajaji Salai,
   Chennai - 600 001.

2. The Commissioner of Customs (Appeals-II),
   Customs House,
   60, Rajaji Salai, Chennai- 600 001

3. The Chief Commissioner of Central Excise,
   26/1, Mahathma Gandhi Road, Chennai-34.

4. The commissioner of Central Excise,
   Chennai-IV, 92, MHU Complex, Nandanam,
   Anna Salai, Chennai-35.

5. Assistant/Deputy Commissioner of Customs,
   Air Cargo Commissionarate, Chennai-1.

To be substituted to the order already despatched on 24/08/2017

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.**61218***
+1cc to Mr.S.Muthuvenkataraman, Advocate, S.R.No.**61375***

W.P.No.13253 of 2017
and
W.M.P.No.14240 of 2017

BR(CO)
GN(07/09/2017)
Eu 7.09.17