In the High Court of Judicature at Madras

Dated : 07.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.29698 to 29700, 33148 & 39330 of 2016, 9942 to 9944, 12407, 26569 & 26570 of 2017 and all connected pending WMPs

M/s.Arthanari Loom Centre (Textile)
Private Limited, rep.by its Managing
Director Mr.A.Alagarasan (in all W.Ps.)

Vs

1.The Commissioner of GST &
Central Excise, Salem I Division,
No.1, Foulks Compound, Salem-1.

2.The Assistant Commissioner of
GST & Central Excise, Salem I
Division, Varalakshmi Orchid,
III Floor, No.103, Ramakrishna
Road, Salem-7. ...RR1 & 2 in W.Ps. 26569 & 26570/2017.

3. The Commissioner of Central
Excise Salem I Division No.1 Foulks
Compound Anaimedu Salem 636 001
...R1 in W.P.29698/16 to 29700/2016, 33148,39330/16 & 9942 to 9944/17 & 12407/2017.

4. The Assistant Commissioner
of Central Excise Salem I Division No.21
Theerthamalai Arcade Veerapandiyar Nagar
Salem 636 004 ..R2 in W.Ps 29698 to 29700/2016, 33148 & 39330/16, & 9942 to 9944/2017.

5. The Deputy Commissioner of
Central Excise Salem I Division No.21
Theerthamalai Arcade Veerapandiyar Nagar
Salem 636 004 ..R2 in W.P. 12407/2017.

6. The Commissioner of GST &
Central Excise Salem I Division No.1
Foulks Compound Anaimedu
Salem 636 001 ..R1 in W.P.26569 & 26570/2017.

7. The Assistant Commissioner
of GST & Central Excise Salem I Division
Varalakshmi Orchid 3rd Floor No.103
Ramakrishna Road
Salem 636 007 ...R2 in W.P.26569 & 26570/2017.

Prayer in W.P. No 29698/2016:

Writ of Certiorarified Mandamus to call for the records of the impugned Show Cause Notice dated 6.6.2016 bearing C.No.V/ 18/52/ 31/2016 -C. Ex.RF and quash the same and consequently direct the 2nd respondent to allow three rebate claims of the petitioner for Rs.11 23 216/- along with interest to the petitioner.

Prayer in W.P.29699/2016:

Writ of Certiorarified Mandamus to call for the records of the impugned Show Cause Notice dated 6.7.2016 bearing C.No.V/ 18/52/ 37/2016 -C. Ex.RF and quash the same and consequently direct the 2nd respondent to allow three rebate claims of the petitioner totaling a sum of Rs.11 02 575/-along with interest to the petitioner.

Prayer in W.P. 29700/2016:

Writ of Mandamus to direct the 2nd Respondent to to allow rebate claims of the petitioner totaling a sum of Rs.48 09 375/- (70 35 166 - 22 25 791) along with interest to the petitioner.

Prayer in W.P. No 33148/2016:

Writ of Certiorari Mandamus To call for the records of the impugned Show Cause Notice dated 12.8.2016 bearing C.No.V/ 18/52/65/ 2016-C.Ex.RF and quash the same and consequently direct the 2nd respondent to allow four rebate claims of the petitioner for Rs.18 92 072/- along with interest to the petitioner.

Prayer in W.P. No 39330/2016:

Writ of Certiorari call for the records of the impugned Show Cause Notice dated 20.09.2016 bearing C.No. V/18/52/81/2016- C.Ex.RF and quash the same.

Prayer in W.P.9942/2017:

Writ of Certiorari to call for the records of the impugned Show Cause Notice dated 17.2.2017 bearing C. No. V/ 18/ 52/02/ 2017-C.Ex.RF passed by the 2nd respondent and quash the same.

Prayer in W.P. 9943/2017:

Writ of Certiorari to call for the records of the impugned Show Cause Notice dated 8.3.2017 bearing C. No. V/ 18/ 52/07/ 2017-C.Ex.RF passed by the 2nd respondent and quash the same.

Prayer in W.P.9944/2017:

Writ of Certiorari to call for the records of the impugned Show Cause Notice dated 8.3.2017 bearing C. No. V/ 18/ 52/08/ 2017-C.Ex.RF passed by the 2nd respondent and quash the same.

Prayer in W.P. No 12407/2017:

Writ of Certiorari to call for the records of the impugned show Cause Notice dated 27.4.2017 bearing C.No.V/ 18/52/13/2017-C.Ex.RF issued by the 2nd respondent and quash the same.

Prayer in W.P. 26569/2016:

Writ petition filed under Article 226 of the constitution of India praying to call for the records of the impugned show cause Notice No 3/17 dated 12.09.2017 bearing C.No.V./18/55/37/17-C-EX-RF issued by the 2nd respondent and quash the same.

Prayer in W.P.26570/2016:

Writ petition filed under Article 226 of the constitution of India, calling for the records of the impugned show cause Notice No 3/17, dated 12.09.2017 bearing C.No.V/18/55/37/2017-C-EX-RF issued by the second respondent and quash the same.

For Petitioners : Mr.C.Saravanan

For Respondents in WP.Nos.39330 of 2016 9942 to 9944, 12407 & 26569 & 26570 of 2017 : Mr.V.Sundareswaran, SPC

For Respondents in WP.Nos.33148 of 2016 & 29698 to 29700 of 2016 : Mrs.Hema Muralikrishnan, SPC

COMMON ORDER

Heard both.

2. The petitioner has challenged the impugned show cause notices issued by the second respondent proposing to reject the petitioner's claim for refund under Section 11B of the Central Excise Act, 1944.

3. On a reading of the impugned show cause notices, it is clear that the second respondent appears to have been inspired by the order passed by this Court in the case of M/s.Raghav Industries Limited, Tiruchengode Vs. Union of India [W.P.No.1226 of 2016 dated 19.2.2016]. By referring to the said decision, the second respondent proposed that the petitioner is not entitled to avail rebate, as they have already availed higher duty

drawback. Therefore, it was opined that by availing rebate, which has now been made as a refund claim, the petitioner would be enjoying double benefit.

4. As against the order in W.P.No.1226 of 2016 dated 19.2.2016, the assessee filed an appeal in W.A.No.429 of 2016, the matter was heard by the Hon'ble Division Bench and judgment has been reserved.

5. The learned Senior Panel Counsel appearing for the respondents, on instructions, submit that on facts, the decision in the case of M/s.Raghav Industries Limited will not apply to the petitioner's case.

6. If that is the fair stand taken by the Revenue, then the basis for issuing the impugned show cause notices has gone and this is sufficient to set aside the impugned show cause notices. However, it has to be made clear that as a result of setting aside the impugned show cause notices, it does not amount to granting a direction to the respondents to refund the amount claimed by the petitioner. The refund applications will have to be considered in accordance with law.

7. Thus, placing on record the stand taken by the learned Senior Panel Counsel for the respondents that the decision in the case of M/s.Raghav Industries Limited will not apply to the petitioner's case, the writ petitions are allowed and the impugned show cause notices are set aside, leaving it open to the respondent Department to proceed afresh in accordance with law. It is made clear that the factual and legal issues pleaded by the petitioner and raised in the counter affidavits are left open to be agitated at the appropriate time. No costs. Consequently, all connected pending WMPs are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Central
   Excise Salem I Division No.1 Foulks
   Compound Anaimedu Salem 636 001

2. The Assistant Commissioner
of Central Excise Salem I Division No.21
Theerthamalai Arcade Veerapandiyar Nagar
Salem 636 004

3. The Commissioner of GST &
Central Excise Salem I Division No.1
Foulks Compound Anaimedu
Salem 636 001

4. The Assistant Commissioner
of GST & Central Excise Salem I Division
Varalakshmi Orchid 3rd Floor No.103
Ramakrishna Road
Salem 636 007

5. The Deputy Commissioner of
Central Excise Salem I Division No.21
Theerthamalai Arcade Veerapandiyar Nagar
Salem 636 004

+1 CC to Ms. Hema Muralikrishnan, Advocate sr 78857.
+11 Ccs to Mr.C. Saravanan, Advocate sr 79051.
+4 Ccs to Mr.V. Sundareswaran, Advocate sr 78880.

WP.Nos.29698 to 29700 of 2016
etc. cases

RV(CO)
SP(29/11/2017)