IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13747 of 2003

Mrs.Padma Raghavan,
Proprietrix, Sri Vigneswara
Textile Printers, Sirumugai. ...Petitioner

Vs.

1.Assistant Commissioner of
Central Excise, Coonoor Dn.
28-2-129C, Karamadai Road,
Mettupalayam.

2.Commissioner of Central Excise
and Customs (Appeals),
Williams Road, Tiruchirapalli-620 001. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent herein, pertaining to the order bearing C.No.V/Ch52/18/82/01 RF/4523/02 dated 19.08.2002 and quash the same and consequently direct the first respondent to refund the sum of Rs.45,332/- together with interest thereon at 18% p.a. from 30.10.96 till the date of payment.

For Petitioner : Mr.R.Ramesh
For Respondents : Mr.K.S.Ramasamy,
Senior Panel Counsel

O R D E R

Heard Mr.R.Ramesh, learned counsel appearing for the petitioner and Mr.K.S.Ramasamy, learned Senior Panel Counsel appearing for respondents 1 & 2.

2.This is a classical case, where the Assistant Commissioner of Central Excise, Coonoor Division, Mettupalayam, has failed to follow the order passed by the Appellate Authority in Appeal No.133 of 2001, dated 21.06.2001. The Hon'ble Supreme Court in the case of Union India vs. Kamlakshi Finanace Corporation Ltd., reported in (1991) 55 E.L.T. 433 (S.C.) pointed out as to what is judicial discipline while giving effect to orders of higher appellate authorities, which are binding on the lower appellate authorities. In Kamlakshi Finance Corporation Ltd. (supra), the case was somewhat similar to the case on hand, where the Assistant Collector was of the opinion that if he accepts the assessee's contention, the Department would lose revenue and would also have no remedy to rectify the order. One such action done by the Assistant Collector in his overzealous attempt to get over an order of the appellate authority was called in question before the Hon'ble Supreme Court. The Hon'ble Supreme Court pointed out that the revenue has to unreservedly follow the appellate authorities order unless operation there of has been suspended by a competent Court and mere fact of appeal having been filed against the order is no ground for not following it. At this stage, it would be beneficial to refer to the operative portion of the said judgment.

"6........The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quashi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department-in itself an objectionable phrase-and is the subject matter of an appeal can furnished no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7.The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Exercise in his order and there is a further right of the appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be not justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E (1) or (2) to keep the interest of the department alive. If the officer's view is that correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail." (emphasis supplied)

3.What has been deprecated by the Hon'ble Supreme Court in the above referred decision has been done by the Assistant

Commissioner in his overzealous attempt to get over the order passed by the appellate authority. The issue arose in the following manner:

4.The petitioner was engaged in the business of textile printing and processing of fabrics. The petitioner paid a duty of Rs.48,767/- on 30.09.1996. Thereafter, the Deputy Commissioner on enquiry held that the duty levied was incorrect and passed an order dated 22.10.1997. Aggrieved by such order, the petitioner preferred appeal to the Commissioner of Central Excise and Customs (Appeals), who by order dated 27.08.1998, reduced the duty to Rs.3,446/-. This order became final. Therefore, the petitioner filed an application for refund of the balance amount of Rs.45,332/- on 23.09.1998. This refund accrued to the petitioner only after the appeal was allowed by the second respondent by order dated 27.08.1998, reducing the duty. Thus, the application was well within the period of two months from the date on which the order passed by the appellate authority. The first respondent considered the application for refund and passed an order dated 21.01.1999, ordering refund, but directing payment of amount to the Consumer Welfare Fund. Once again, the petitioner filed appeal before the Commissioner, who by order dated 21.06.2001, allowed the appeal, holding that since this was duty paid on demand, there was no question of the petitioner passing on the duty burden to any consumer, and therefore, the petitioner was entitled to refund in its entirety. There was also a positive direction to grant refund. Unfortunately, the first respondent, who appears to have assumed the role, as being guardian of State finances, has passed the impugned order, holding that the claim for refund is hit by limitation. The attempt of the first respondent is to somehow circumvent the order passed by the Commissioner (Appeals). This attempt cannot be encouraged and such attempts have been deprecated by the Hon'ble Supreme Court as pointed above. These are all sufficient reasons to hold that the impugned order deserves to be set aside.

5.Accordingly, this writ petition is allowed, the impugned order is set aside and the first respondent is directed to effect refund as ordered in Appeal No.133 of 2001, dated 21.06.2001 within a period of eight weeks from the date of receipt of a copy of this order along with applicable interest under Section 11BB of the Central Excise Act, 1944. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner of
Central Excise, Coonoor Dn.
28-2-129C, Karamadai Road,
Mettupalayam.

2.The Commissioner of Central Excise
and Customs (Appeals),
Williams Road, Tiruchirapalli-620 001.

+ 1 cc to Mr. K.S. Ramasamy, Advocate SR.74682
+ 1 cc to Srinath Sridevan, Advocate SR.74853

W.P.No.13747 of 2003

CS-IV
EU(21/11/2017)