IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26861 of 2003

The Executive Engineer,
P.W.D./W.R.O.,
Vennar Basin Division, Thanjavur. ... Petitioner

Vs.

1.The Asst. Commissioner of
Central Excise, Ponnagar,
Medical College Road, Thanjavur.

2.The Collector of Customs
and Central Excise, Trichy. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent made in order No.44/2003 dated 31.07.2003 vide C.No.V/68/18/12/2003-Refund before the Assistant Commissioner of Central Excise, Thanjavur and quash the same and consequently direct the second respondent to refund the amount of Rs.33,40,771/- along with interest as per Section 11(B)(B) of Central Excise and Salt Act 1944 deposited vide challan No.463691/G4637 dated 19.03.1999.

For Petitioner : Mr.T.Jayaramaraj,
Government Advocate

For Respondents : Mrs.R.Hemalatha,
Senior Standing Counsel for
Central Excise

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O R D E R

Heard Mr.Jayaramaraj, learned Government Advocate appearing for the petitioner and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the respondents.

2.The petitioner is an Executive Engineer of the Public Works Department/Water Resources Organization, Vennar Basin

Division, Thanjavur, and in this writ petition, he seeks for issuance of writ of certiorarified mandamus, to quash the order passed by the first respondent dated 31.07.2003 and to direct the second respondent to refund the amount of Rs.33,40,771/-.

3.It may not be necessary for this Court to elaborate upon the nature of work done by the petitioner, for which the demand of central excise duty was raised. It would be suffice to note that the petitioner has suffered an Order-in-Original No.20 of 1994, dated 13.07.1994, at the hands of the second respondent. Challenging the said order, the petitioner has preferred appeals before the Customs Excise & Gold (Control) Appellate Tribunal (in short "CEGAT") in Appeal Nos.E/141 to 146/1994. As a condition precedent for entertaining the appeals, the petitioner has to pre-deposit a sum of Rs.33,40,771/-. The CEGAT, fixed a time limit within which, the same had to be done. The petitioner did not deposit it within the said time, but deposited it with a delay. However, the CEGAT refused to condone the delay and dismissed the waiver application as well as the appeal petition on such technical ground. The petitioner rushed to this Court and filed a writ petition in W.P.No.34017 of 2004, dated 29.08.2002, questioning the order passed by the CEGAT, rejecting the petitioner's appeals on the ground of non-compliance of the pre-deposit demand. The Court, while taking into consideration the fact that the petitioner/Department has already pre-deposited a sum of Rs.33,40,771/-, with the second respondent, granted liberty to the petitioner/Department to approach the CEGAT by proper application for restoration of the appeals within a time frame and with the further direction to the CEGAT to decide the case on merits. Pursuant thereto, the appeals filed by the petitioner, six in number against the common Order-in-Original No.20 of 1994 dated 13.07.1994, confirming the demand of Rs.33,40,771.88/- were allowed by order dated 31.10.2002. The CEGAT not only allowed the appeals, but also specifically directed that the petitioner/Department would be entitled to the consequential relief. It appears that the said order became final, as the revenue did not prefer any appeal before the Division Bench of this Court. Thus, the petitioner was entitled to get back the amount, which he had pre-deposited as a condition precedent for entertaining the appeals. When the petitioner went before the first respondent and requested for payment of the said amount, the first respondent has treated the said claim as a revision claim and rejected it, stating that it has been filed after a lapse of more than four years from the date of payment of duty. In this regard, the first respondent referred to Section 11 B(5) of the Central Excise Act, 1944, and held that the refund claim is hit by limitation.

4.After elaborately hearing the leraned counsel for the parties and carefully perusing the materials placed on record, I am fully convinced that the impugned order is not sustainable in law for more than one reason.

5.Firstly, the requests made by the petitioner for return of the amount on hand had been treated as a refund claim. A refund will occur only if money is paid. Even, as per the orders passed by the CEGAT, the petitioner had pre-deposited such amount as a condition precedent for filing an appeal. Thus, the said deposit should abide by the final orders to be passed by the CEGAT in the petitioner's appeal petition. Such deposit amount cannot be appropriated towards the duty demand, unless and until the CEGAT dismissed the appeal. Thus, for all practical purposes, the said amount stood remained in a suspense account as a deposit pending appeal before the CEGAT. Therefore, Section 11 B(5) of the Central Excise Act, 1944 would have no application to the facts and cirucumstances of the case.

6.Secondly, even assuming that the respondent construed the amount deposit as paid, limitation for filing application for refund can arise and will arise only after the order passed by the CEGAT dated 31.10.2002. Within hardly seven months from the said date, the petitioner made the first request vide letter dated 29.05.2003, followed by remainder dated 27.06.2003. Thus, going by these dates, the application filed by the petitioner is not hit by limitation. Thus, for the above reasons, the impugned order is held to be unsustainable.

7.Accordingly, this writ petition is allowed and the impugned order is quashed with the direction to the second respondent to return the amount of Rs.33,40,771/-, along with applicable statutory interest within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

abr

Index:Yes/No

To

1.The Asst. Commissioner of
Central Excise, Ponnagar,
Medical College Road, Thanjavur.

2.The Collector of Customs
and Central Excise, Trichy.

+1cc to the Government Pleader(excise), S.R.No. 75961

+1cc to Mr.R.MEMALATHA Advocate, S.R.No. 76111

W.P.No.26861 of 2003

RSI(CO)
TR(24/11/2017)