IN THE HIGH COURT OF JUDICATURE AT MADRAS

dated 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.625 of 2018

Karnataka Power Corporation Limited
Shakthi Bhavan,
Racecourse Road,
Bangalore - 560 001.
Represented by Chief Engineer (Electrical Designs)
Mr.M.Shivamallu ..Petitioner

Vs.

1. Customs Commissioner,
Department of Revenue,
Customs House,
33, Rajaji Salai
Chennai - 600 001

2. Assistant Commissioner of Customs (Refunds)
Department of Revenue
Customs House,
33, Rajaji Salai
Chennai - 600 001 ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus directing the second respondent to refund the customs duty pursuant to the final order dated 2 March 2016 passed by the CESTAT, South Zonal Bench, Chennai.

For Petitioner : Mr.M.V.Swaroop

For Respondents : Mr.T.Pramod Kumar Chopda

O R D E R

The petitioner seeks for mandamus directing the second respondent to refund customs duty pursuant to the final order dated 02.03.2016 passed by the CESTAT, Chennai.

2.The case of the petitioner in short, is as follows:

The petitioner is a Government of Karnataka undertaking engaged in the business of power generation for the State of Karnataka. The petitioner has a Hydro Electric Generator power plant at Sharavathi. For the said power plant, certain parts viz., epoxy stator coil were imported through Bills of Entry dated 25.08.1994 and 27.08.1994. The Customs authorities assessed the customs duty payable to such item under tariff 8544.11 under the Customs Tariff Act, 1975. The petitioner paid the customs duty for clearing the goods. Subsequently, the petitioner filed a claim for reassessment of the goods under Tariff item 8503 and refund of excess amount paid by the petitioner, through application dated 27.08.1994. The said request was rejected by the Commissioner (Appeals). The said order was upheld by the CESTAT vide its final order dated 25.04.2000. The petitioner challenged the said order of the CESTAT before the Apex Court, which in turn, through order dated 09.04.2002, set aside the said order and remanded the matter back to the Assistant Commissioner to decide the original application dated 27.08.1994. The Assistant Commissioner reconsidered the application and found that the goods were rightly classified under tariff 8544. Thus, the said authority rejected the claim of the petitioner once again. The appeal filed by the petitioner before the First Appellate Authority also was rejected. However, further appeal filed before the CESTAT ended in favour of the petitioner on 02.03.2016. The CESTAT found that the goods imported under the Bills of entries are epoxy stator coils classifiable under 8503 not under 8544. The CESTAT also observed that the Authorities will settle the legitimate refund claim of the petitioner on receipt of the said order. However, till this date, the refund claim of the petitioner has not been considered. Thus, the present writ petition.

3.A counter affidavit is filed by the respondents wherein it is stated as follows:

The petitioner imported goods described as epoxy coils during the year 1990 and the same were originally assessed under Customs Tariff Heading 8544.11 and the duty was paid accordingly without any protest. Later on, the petitioner claimed the refund of differential amount by claiming the classification of item under Custom Tariff Heading 8501.64/9801. The said request was rejected. The CESTAT vide order dated 02.03.2016, held that the epoxy coils classified under 8544 are appropriately classifiable under 8503. In pursuant to the above order of the CESTAT, the petitioner was issued with notice dated 05.04.2017, calling for the documents mentioned therein followed by two other notices dated 24.04.2017 and 08.05.2017. Another notice was also issued on 26.02.2018, giving an opportunity to the petitioner to file its explanation in respect of discrepancy.

4.Learned counsel for the petitioner submitted that there is no justification on the part of the respondents in not refunding the excess duty paid by the petitioner, even after clear cut finding given by the CESTAT in its order dated 02.03.2016, accepting the classification of the imported goods under 8503. He further submitted that the petitioner's claim is based on Notification 172/89-Customs dated 29.05.1989. He also produced copy of the said notification for the perusal of this Court.

5.Learned counsel for the respondents, on the other hand, submitted that the petitioner was already issued with notice on several occasions in pursuant to the order passed by the CESTAT to come and clarify as to the relevant notification, under which the petitioner makes such refund claim. He further contended that last of such notice was issued to the petitioner on 25.02.2018 and therefore, it is for the petitioner to appear and clarify the position.

6.Heard both sides and perused the materials placed before this Court.

7. The petitioner imported an item called Epoxy stator coil for their power plant vide Bills of entry dated 25.08.1994 and 27.08.1994. At the time of submitting the bills of entry, the classification of the goods imported was declared as CTH 8544.11 under the schedules to the Customs Tariff Act, 1975. However, the petitioner later realised that the said goods imported by the petitioner would fall under item 8503 and not under 8544.11 and that the tariff item 8503 is also an exempted item, based on a notification issued by the Revenue in Notification No.172/89-Customs dated 29.05.1989. Consequently, when the petitioner made an application for refund of duty paid, a dispute arose between the parties with regard to classification of goods imported. Though originally at the first round, the petitioner failed to succeed, the fact remains that after remand by the Apex Court, the CESTAT by order dated 02.03.2016, found the classification issue in favour of the petitioner by specifically holding that the goods imported under the Bills of entry are epoxy stator coils classifiable under 8503 and not under 8544. Therefore, the Tribunal allowed the appeal with consequential relief. It is also specifically observed by the Tribunal that the Authorities below will settle the legitimate refund claim of the petitioner on receipt of the order. Paragraphs 7 and 8 of the order passed by the Tribunal read as follows:

> "7.Accordingly, we hold that the goods imported under the Bills of Entries are epoxy stator coils solely designed for power generators for Hydro Power Project and rightly classifiable under 8503 and not under 8544. Accordingly, the impugned order is set aside and appeal is allowed with consequential

relief.

8. Before parting we observe that this case pertains to 1990 and for 15 years it is moved to various appellate levels and this is the third round of litigation and where in at the first round the dispute reached up to the Hon'ble Supreme Court and the Apex Court allowed their appeal and remanded to the Asst. Commissioner to decide the refund application. Considering the period of 15 years' time to reach the final stage and also considering the appellant is a State PSU, Karnataka Power Corporation Ltd., we expect the authorities below to settle their legitimate refund claim on receipt of this order."

8. There is no dispute that the above said order of the Tribunal has become final, as no further appeal is filed by the Revenue against the said order. When such being the position, more particularly, when the classification issue has reached its finality in favour of the petitioner, there is no justification on the part of the respondents in keeping the refund claim of the petitioner pending all these years, even though such order was passed by the Tribunal on 03.03.2016. Now, as it is stated before this Court that the claim of the petitioner will be considered without any further delay, this writ petition is disposed of with a direction to the respondents to pass orders on the refund claim filed by the petitioner, based on the order already passed by the CESTAT as well as the notification issued by the Revenue in Notification No.172/89-Customs dated 29.05.1989. Such exercise shall be done by the respondents within a period of four weeks. No costs.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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To

1. Customs Commissioner,Department of Revenue,
Customs House,33, Rajaji Salai,Chennai - 600 001

2. Assistant Commissioner of Customs (Refunds)
Department of Revenue Customs House,
33, Rajaji Salai, Chennai - 600 001

+1cc to Mr.T.Pramodkumar Chopda, Advocate SR.No.59176

+1cc to Mr.M.V.Swaroop, Advocate SR.No.60009

W.P.No.21614 of 2018

GMY(19/09/2018)