In the High Court of Judicature at Madras

Dated : 18.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.9470 of 2018 & WMP.No.11368 of 2018

M/s.Indo Shell Mould Ltd.,
Plant II, Coimbatore-641021. ...Petitioner

Vs

1.The Customs and Central Excise
Settlement Commission, No.33,
Rajaji Salai, Narmada Block,
Custom House, Chennai-1.

2.The Commissioner of Central
Excise, No.6/7, A.T.D.Street,
Race Course Road, Coimbatore-18. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to Order No.12/2018-ST dated 05.3.2018 of the first respondent, quash the same and consequently grant time to pay the interest in monthly instalments.

For Petitioner : Mr.Shankar Raman
For Respondents: Mr.A.P.Srinivas, SPC

ORDER

Mr.A.P.Srinivas, learned Senior Panel Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is before this Court challenging the order passed by the first respondent under the Central Excise Act, 1944 dated 05.3.2018 not on the merits of the matter. But, the petitioner is aggrieved by that portion of the order of the first respondent whereby the request made by the petitioner to settle the interest liability in instalments was negatived. By the impugned order, the first respondent settled the case and directed the additional amount of service tax to the tune of Rs.63,13,770/- to be paid. The interest liability was settled at Rs.44,73,546/- and the Bench also imposed penalty of Rs.1.80 lakhs on the petitioner. Subject to payment of the aforesaid

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three amounts, the petitioner was granted immunity from prosecution under the Finance Act, 1994.

3. It is not in dispute that the petitioner cleared the additional amount of service tax to the tune of Rs.63,13,770/-. The petitioner also paid the penalty to the tune of Rs.1.80 lakhs. Out of the entire interest liability, which was settled at Rs.44,73,546/-, the petitioner has paid a sum of Rs.2,80,227/- and another sum of Rs.3.93 lakhs and now, roughly around Rs.38 lakhs is payable. Even before the order was passed by the first respondent, the petitioner filed an application before the jurisdictional Joint Commissioner vide representation dated 12.7.2017 agreeing to pay interest liability as well as other dues in 14 instalments. However, subsequently, the first respondent took up the matter and settled the case by order dated 05.3.2018.

4. Even before the first respondent, the petitioner made an identical request as done before the jurisdictional Joint Commissioner. However, the first respondent was not inclined to accede to the request made by the petitioner on the ground that the Commissioner communicated the interest liability to the petitioner vide order letter 25.9.2017. Therefore, the first respondent opined that by then, the petitioner should have made necessary arrangements to clear the entire interest liability.

5. Before this Court, the petitioner would contend that due to financial constraints, they are not in a position to pay the balance of interest liability at Rs.41,93,319/- within 30 days. However, Rs.3.93 lakhs has already been paid on 27.3.2018 as well as penalty to the tune of Rs.1.80 lakhs. Now, a sum of Rs.38,00,319/- is due.

6. The petitioner seeks extension of time to make the balance of interest liability in four equal instalments for the reason that they paid duty arrears to the tune of Rs.22.65 Crores from out of the funds borrowed, that there is a deficit in working capital due to additional investment in the new project, that the petitioner is also liable to pay interest due to the tune of Rs.2.02 Crores to the Government, which is being paid in monthly instalments and that the petitioner suffered cash loss from operation to the tune of Rs.89.29 Crores as per audited financials for the year 2016-17.

7. In my considered view, the petitioner has not challenged the order passed by the first respondent on merits. They are ready and willing to comply with the direction of payment of interest liability. They week four months' time to pay the balance of interest liability. Taking note of the fact that the petitioner approached the first respondent and settled their case, bearing in mind the object, for which, the first

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respondent was constituted and also taking note of the fact that the additional amount of service tax as settled by the first respondent to the tune of Rs.63,13,770/- and penalty to the tune of Rs.1.80 lakhs have already been paid, this Court is inclined to grant time to the petitioner to settle the balance of interest liability.

8. Accordingly, the writ petition is disposed of with a direction to the petitioner to commence payment of the balance of interest liability namely Rs.38,00,319/- (Rupees thirty eight lakhs three hundred and nineteen only) as was settled before the first respondent, within one week from today and make the entire payments within a period of four months from today. No costs. Consequently, the connected WMP is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

To
1.The Customs and Central Excise Settlement Commission, No.33, Rajaji Salai, Narmada Block, Custom House, Chennai-1.

2.The Commissioner of Central Excise, No.6/7, A.T.D.Street, Race Course Road, Coimbatore-18.

+ 1 cc to Mr. J. Shankar Raman, Advocate SR.28831
+ 1 cc to Government Pleader SR.28774

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(CS-DR)
EU(20/04/2018)

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