IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.955 of 2018

M/s High Energy Batteries (India) Limited
Represented by its Authorised Signatory Mr.S.V.Raju
"Esvin House"
P.Box.No.5068, Perungudi
Chennai - 600 096
...Petitioner

Vs.

1.The Joint Commissioner of Customs
Aircargo Complex, New Custom House
GST Road, Meemnambakkam, Chennai - 600 027.

2.The Assistant Commissioner of Customs
Aircargo Complex, New Custom House
GST Road, Meemnambakkam, Chennai - 600 027.

3.The Commissioner of Customs
Aircargo Complex, New Custom House,
GST Road, Meemnambakkam, Chennai - 600 027.
...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to settle the Rebate Claim filed by the petitioners with the first respondent's office in File S2/2011/09/03/122/-DBK/Air dated 22.09.2011 by paying the claim amount of Rs.6,91,148/- along with applicable interest on the same for the delayed period within a time limit to be fixed by this Hon'ble Court.

For Petitioner : Mr.S.Muthuvenkataraman
For Respondent : Mr.B.Rabu Manohar
Senior Panel Counsel

O R D E R

Heard Mr.S.Muthuvenkataraman, learned counsel for the petitioner and Mr.B.Rahu Manohar, learned Senior Panel Counsel appearing on behalf of the respondent.

2.The petitioner seeks for a positive direction upon the respondent to settle the rebate claim filed by him in the office of the respondent on 22.09.2011, paying an amount of Rs.6,91,148/- along with applicable interest. The petitioner having corresponded with the department from 2011 and having favoured with no reply except for one letter dated 03.10.2013, requesting the petitioner to give photostat copies of all the pages of the triplicate copy of shipping bill no.9008800 dated 22.06.2011 including the examination report as they wanted to reconstruct the file pertaining to the petitioner's claim under Section 74, no orders have been passed by the respondent. This has compelled the petitioner to approach this Court.

3.The petitioner cannot be faulted for having approached this Court. Though there is a request made on behalf of the Revenue to grant time to file counter affidavit, on considering the facts of the present case, I do not propose to grant such an indulgence.

4.The petitioner's case is that they are engaged in the manufacture and sale of Silver Oxide Zinc/Silver Chloride Batteries in their factory situated in Pudukottai District. The petitioner is stated to have imported SEAWATER ACTIVATED SILVER CHLORIDE MAGNESIUM BATTERY STACK TYPE SWA033 FOR A244S/LWT MODO3 vide Bill of Entry No.3251605 dated 19.04.2011 and after doing necessary fitment of accessories and testing, the same battery re-exported to the customer vide Shipping Bill No.9008800 dated 21.06.2011 under Section 74 of the Customs Act, 1962. The re-export occurred on 22.06.2011. The petitioner further states that on account of the fitment of accessories done by the petitioner, the cost of the battery had been enhanced from 40,000/- Euro to 48,000/- Euro. At the time of re-export, worksheet was sent to the respondent vide petitioner's letter dated 22.09.2011. Since the final product was exempted from payment of excise duty and the petitioner having not availed Cenvat Credit facility, sought for refund of duty in the form of Duty Drawback. This claim has been pending since 2011. Unfortunately, the Department did not consider the petitioner's claim, but appears to have lost the file and requested copies to be furnished so as to enable them to reconstruct the file. However, this reconstruction was done in 2013 and till date, nothing has moved.

5.The inaction on the part of the Department is not appreciable and it is a clear case, where the officials were blatantly violated the circular issued by the Central Board of Excise & Customs, New Delhi and Circular:21/390-CX.8, dated 04.04.1990, which deals with the subject, delay in disposal of refund claims and instructions were issued to all field formations and it has been specifically stated that refund claims should be disposed of on merits and in no case, the refund claim should be kept pending beyond the period of three months.

6.Therefore, the respondent should take a decision on the petitioner's application at the earliest. In the light of the above, the writ petition is disposed of, by directing the respondent to take a decision on the petitioner's rebate/refund claim dated 22.09.2011, 05.01.2013 and 27.02.2017, along with the letter of the Superintendent of Central Excise, Range I-B, Central Excise I Division, "B" Wing, Cantonment, Trichy, certifying that the petitioner has not availed Cenvat credit facility towards the imported battery Bill of Entry dated 19.04.2011 and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the authorised representative of the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

1.The Joint Commissioner of Customs
Aircargo Complex
New Custom House
GST Road, Meenambakkam
Chennai - 600 027

2.The Assistant Commissioner of Customs
Aircargo Complex, New Custom House
GST Road, Meemnambakkam, Chennai - 600 027.

3.The Commissioner of Customs
Aircargo Complex, New Custom House,
GST Road, Meemnambakkam, Chennai - 600 027.

+ 1 cc to Mr.S.Muthuvenkataraman Advocate,SR.7859
+ 1 cc to Mr.B.Rabu Manohar Advocate,SR.7671

W.P.No.955 of 2018

ssd(co)
nr 14/03/2018