IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24328 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s. Raja Crowns and Cans Pvt Limited,
Registered Office & Factory at
Plot No.70B, 71, Phase II,
Sipcot Indistrical Complex,
Hosur - 635 109. ... Petitioner

vs.

1. Union of India,
Rep. by its Secretary,
Department of Commerce,
Ministry of Commerce & Industry,
Udyog Bhavan, New Delhi - 110 107.

2. The Director General of Foreign Trade,
H Wing, Gate No.2,
Udyog Bhavan, New Delhi - 110 107.

3. The Zonal Joint Director General of Foreign Trade,
Shastri Bhavan CPWD Annexe Building, 4th floor,
No.26, Haddows Road, Nungambakkam,
Chennai 600 006.

4. The Commissioner of Central Excise,
Chennai III Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified Mandamus, to call for the records from the 3rd respondent and to quash the order dated 30.04.2015 passed by the 3rd respondent vide file No.04/41/083/00047/AM11 and with a specific direction to the 3rd respondent sanction refund of the TED claims filed by the petitioner under chapter 8 of the Foreign Trade Policy.

For Petitioner : M/s.S.Jaikumar
For Respondents 1- 3 : Dr.D.Simon, CGSC
for R4 : Mr.A.P.Srinivas, Senior Counsel
for Central Excise

O R D E R

The order of rejection dated 30.04.2015 passed by the 3rd respondent for refund of the TED claims filed by the petitioner under chapter 8 of the Foreign Trade Policy is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner in the nutshell contended that, the issues involved in the present writ petition is no more lis integra. The issues have been already settled by this Court on several occasions and more specifically in respect of the policy which was in force during the years 2009 and 2010 and prior to the issuance of amendment in the year 2013, the petitioner is entitled to get refund of TED amount. All along the petitioner had availed the same benefit prior to the year 2009. However, only in respect of the refund for the year 2009, the respondents had raised objections and for subsequent periods the claims are still pending with the authorities.

3. The learned counsel for the writ petitioner further states that earlier he preferred a writ petition in W.P.No.1468 of 2013 and this Court passed an order on 08.12.2014 directing the authorities to consider the case of the writ petitioner. However, the respondents without considering the issues decided by this Court in many writ petitions rejected the claim of the writ petitioner. Thus the writ petitioner is constrained to approach this Court once again by filing the present writ petition.

4. The learned Standing Counsel for the 4th respondent opposed the contention by stating that, the writ petitioner could not be eligible to get refund of TED amount as the interpretation given by the authorities are in accordance with the statutory provisions. Undoubtedly, an amendment was issued in the year 2013 and even in respect of the years 2009 and 2010, the Act is to be interpreted and accordingly the respondents have done the same. Thus, there is no infirmity in respect of order passed by the respondents. This apart it is contended that, there is an appeal remedy provided by the statute for the writ petitioner enabling them to redress their grievances. Thus, the present writ petition need not be considered in view of the fact that the writ petitioner has not exhausted the appeal remedy.

5. This Court is of an opinion that, in respect of appeal remedy the writ petitioner earlier filed a writ petition, this Court has issued a direction to consider the case of the writ petitioner in the light of the orders passed by this Court in other writ petitions. Once again the respondents have rejected the contention by providing the very same reasons. In view of the fact that the respondents are provided the same reasons even while passing the second rejection order, there is no purpose in sending back the matter to the Appellate Authority. Alternate remedy can be waived in this writ petition in view of the fact that authorities are citing the very same reason and rejecting the claim of the writ petitioner more than one occasion. Thus, this Court is bound to follow the earlier orders of this Court in respect of the refund of TED amount to the writ petitioner in relevant to the year 2009 - 2010.

6. This Court passed an order on 08.12.2014 in W.P.No.1468 of 2013, wherein the issues were discussed elaborately and the following orders are passed in paragraphs 9 and 10 which is extracted here under:-

> "9.The authorities in this case appear to have proceeded to make an order adverse to the petitioner and proceeded to hold that the petitioner was disentitled to the benefit of refund in view of some clarification given by the Policy Interpretation Committee, in its meeting of 04.12.2012 to the effect that #refund of CENVAT credit provisions are available under Excise rules and CENVAT rules which should be availed of rather than claiming refund#. This reasoning appears to have prevailed with the Policy Relaxation Committee as well in this case. This Court is unable to comprehend the rationale of the decision of the second and third respondents who also seem to have suggested that the petitioner should approach the DGFT for appropriate relief or clarification. Neither of the authorities dispute that the petitioner supplied goods to the EOU at the relevant time. Its entitlement, therefore, was defined in terms of the existing policy, i.e. Refund in terms of paras 8.2, 8.3, 8.4 and 8.5 of the 2009 Policy as discussed above. That a subsequent amendment was made to the existing regime which in effect liberalized the position further and exempted payment of TED altogether cannot surely be a reason for denying the scheme for refund of payment already made. The Court also is unable to see the reason why the respondents were of the view that refund claim or benefit under the CENVAT regime under the Central Excise Act or the other statutory schemes framed under it is available. In this Court's opinion, that regime

operates in its own terms and is independent of the rights and liabilities of the petitioner and the respondents under the import-export policies framed under the 1992 Act. This Court notices that its reasoning is fortified by the decision of the Division Bench of the Calcutta High Court in JDGFT V. IFGL Refractories Limited, 2002 (143) ELT 294 (Cal). There, the Court ruled that once the supply of goods falls within the category of deemed export, the unit would be entitled to refund of TED.

10.In view of the above discussion, the impugned orders are hereby quashed. The respondents are hereby directed to process and pass appropriate orders in accordance with the 2009 policy in respect of the petitioner's refund claims made through its applications dated 29.08.2012 and 16.11.2012 within three months from today. The writ petition is allowed in the above terms. No costs."

7. Following the above decisions of this Court another judgement was passed in the case of Lenovo (India) Pvt. Ltd Vs Union of India reported in 2017 (346) E.L.T.12 (Mad.). It is further contended that the same legal principles were followed in the case of Acer India Pvt Ltd Vs Union of India reported in 2018 (361) E.L.T.44(Kar.) and in the case of Deepak Enterprises Vs Union of India reported in 2018 (360) E.L.T.905 (Del.). The various High Courts were taken a consistent view in respect of the refund of TED amount to the petitioners especially during the year 2009 - 2010 and more specifically till the date of amendment was issued in the year 2013.

8. It is being the factum of the case, the case of the writ petitioner deserves merit consideration. Accordingly the impugned order passed by the 3rd respondent in order dated 30.04.2015 in file No. 04/41/083/00047/AM11 is quashed and the respondents are directed to refund the TED claims filed by the petitioner with reference to the year 2009-2010 within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly the writ petition stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Union of India,
   Department of Commerce,
   Ministry of Commerce & Industry,
   Udyog Bhavan, New Delhi - 110 107.

2. The Director General of Foreign Trade,
   H Wing, Gate No.2,
   Udyog Bhavan, New Delhi - 110 107.

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   Chennai 600 006.

4. The Commissioner of Central Excise,
   Chennai III Commissionerate,
   26/1, Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.72663

+1cc to Mr.S.Jaikumar, Advocate, S.R.No.72366

W.P.No.24328 of 2015

BS(CO)
GSP(14/11/2018)