IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 31944 of 2017

S. Ponsekar
Surviving Partner of
M/s. Raja Metal Corporation,
3/5, Chidambaram Nagar,
2nd Street, Tuticorin - 628 008.

...Petitioner

Vs.

1. Commissioner of Customs
Chennai - IV Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2. Assistant Commissioner of Customs (Refunds),
O/o. Commissioner of Customs - IV
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to direct the respondents herein to cause refund of Rs.10,41,409/- made as pre-deposit of 7.5% of the duty amount, confirmed under TR6 challan No.MCRAF 0040318, dated 06.04.2017 with interest at appropriate rates.

For Petitioner : Mr.B.Satish Sundar

For Respondents : M/s.Hema Muralikrishnan
Special Government Pleader

ORDER

Heard Mr.B.Satish Sundar, the learned counsel appearing for the petitioner and Mrs.Hema Muralikrishnan, the learned Special Government Pleader, accepting notice on behalf of the respondents.

2. The petitioner has filed this Writ Petition seeking for issuance of a Writ of Mandamus to direct the respondents to refund the amount of Rs.10,41,409/- which was made by the

petitioner as pre-deposit for preferring Appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT).

3. The reason for seeking such a prayer is on account of the fact that the Appeal has been allowed by CESTAT by order dated 17.08.2017, and the matter has been remanded to the respondent for a fresh decision.

4. The learned counsel appearing for the petitioner has submitted that, in terms of the Circular issued by the Central Board of Excise and Customs (CBEC) dated 16.09.2014, in Circular No.984/08/2014-CX, the refund of pre-deposit has to be made in the event of the matter is remanded for fresh consideration and such pre-deposit shall be payable along with interest. It is further submitted by the learned counsel that on such remand, the CESTAT has directed the concerned Adjudicating Authority to await the decision of the Hon'ble Supreme Court, in Union of India Vs. Mangli Impex [(2016) 339 ELT A 49 (SC)]. Further, CESTAT took note of the decision of the Delhi High Court in BSNL Vs UOI in W.P.No.C/4438/2017, wherein, the Delhi High Court has granted liberty to the petitioner therein to review the challenge depending on the outcome of the Appeals filed by the Union of India before the Hon'ble Supreme Court of India against the judgment of the Delhi High Court in the case of Mangali Impex Ltd (supra). The learned counsel appearing for the petitioner would state that in terms of the Circular issued by CBEC, they are entitled for refund of the pre-deposit.

5. The learned Senior Panel Counsel for the respondent, by referring to the counter affidavit has submitted that the matter is yet to attain finality and in certain cases, the orders passed by CESTAT have been stayed by the Division Bench. One such order passed in C.M.A.Nos.266 to 287 of 2018 dated 06.02.2018 has been produced before this Court.

6. The learned counsel appearing for the petitioner submits that the said Appeals relates to some other order-in-original and the final orders passed by CESTAT in the petitioner's case dated 17.08.2017 has not been appealed against.

7. After elaborately hearing the learned counsel appearing for the petitioner and the learned Standing Counsel for the respondent, I find that the refund of pre-deposit cannot be ordered at this stage, as it would not protect the interest of the Revenue. So far as the effect of Clause 5.4 of the Circular issued by CBEC dated 16.09.2014 is concerned, the same can be made applicable in cases, where, the matter is remanded for fresh consideration. Nevertheless, without considering the factual position, there cannot be a straight jacket formula in

all such cases. In the instant case, the Tribunal, while remanding the matter to the Adjudicating Authority and allowing the adjudication to proceed further, directed the Adjudicating Authority to await the decision of the Hon'ble Supreme Court in Mangli Impex Ltd (supra). Thus, the issue has not attained finality and the assessment not been able to proceed with, since the adjudication has been stayed by the order passed by CESTAT. Thus, in the peculiar facts and circumstances of the case, I am of the view that, clause 5.4 of the Circular, dated 16.09.2014 cannot be made applicable and refund cannot be ordered at this stage. In any event, since the Circular provides for payment of interest on the pre-deposited amount, it would be sufficient to consider the petitioner's Appeal along with other Appeals. Since the relief sought for in this Writ Petition cannot be acceded to at this stage, the Writ Petition is dismissed. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1. Commissioner of Customs
   Chennai - IV Commissionerate
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. Assistant Commissioner of Customs (Refunds),
   O/o. Commissioner of Customs - IV
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

+1 CC to Mr.B. Sathish sundar, Advocate sr 30557.
+1 CC to Mrs.Hema Muralikrishnan, Advocate sr 30130.

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NRL(CO)
SP(01/06/2018)