IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.33503 of 2017

D.V.Kishore ...Petitioner

Vs.

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

2. Assistant Commissioner of Customs,
   (Refund Section)
   O/o.Commissioner of Customs,
   Chennai - IV, Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to act on my application dated 24.08.2017 and cause refund of a sum of Rs.3 lakhs predeposited under TR6 challan No.MCM090 0364 dated 02.09.2010 with interest pursuant to orders of this Hon'ble Court in CMA No.3652 of 2008 dated 28.03.2017.

For Petitioner : Mr.B.Sathish Sundar
For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel

O R D E R

Heard Mr.B.Sathish Sundar, learned counsel for the petitioner and Mr.V.Sundareswaran, learned senior standing counsel for the Revenue.

2.The petitioner seeks for a direction upon the respondents to consider the petitioner's application dated 24.08.2017 and refund a sum of Rs.3,00,000/-, which was pre-deposited by the petitioner vide order dated 02.09.2010 with interest pursuant to the orders passed by the Hon'ble Division Bench of this Court in C.M.A.No.3652 of 2008 dated 28.03.2017.

3.The petitioner's claim for refund is pursuant to the judgment of the Hon'ble Division Bench in C.M.A.No.3652 of 2008. This Appeal was filed by the petitioner, challenging the order passed by the Commissioner of Customs, Sea Port-Imports, as confirmed by the CESTAT, by which, penalty of Rs.10,00,000/- was imposed on the petitioner under Section 112(a)(b) of the Customs Act and confiscation of Rs.1,43,452 under Section 111(d)(l)(m) of the Act and also confiscation of cell phone under Section 111 (d)(m) of the Act.

4.Two questions of law were framed for consideration before the Hon'ble Division Bench of this Court, which reads as follows:

> "1. Whether the first respondent authority and the second respondent Tribunal is correct in holding that the charges of Section 112(a) & (b) of Customs Act, 1962 is made out in the facts and circumstances of the case against the appellant, warranting imposition of penalty of Rs.10 lakhs?
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> 2. Is the 2nd respondent tribunal right in attaching importance to the alleged confessional statement of the appellant, especially when the same has been retracted at the earliest point of time and such confessional statement have not been corroborated by any independent evidence."

5.Both the above questions were answered in favour of the petitioner and the Appeal was allowed. After the decision was rendered, the petitioner submitted a representation on 24.08.2017, requesting for refund of the amount of Rs.3,00,000/-, which was pre-deposited by the petitioner as per the interim orders granted by the Hon'ble Division Bench in C.M.A.No.3652 of 2008. This application was followed by the reminder dated 24.08.2017 from the counsel for the petitioner and followed by a further reminder dated 07.11.2017. Since the applications and the reminders have not been considered, the petitioner has come before this Court. The second respondent by a note addressed to the Assistant Commissioner of Customs, Legal Cell, Customs House, Chennai, has stated that the details sought for are not readily available and the second respondent needs some time to construct the bundle. Hence, adjournment by thirty (30) days is sought for. Unfortunately, the department is unable to trace the file especially they were unable to preserve the file ever since from the year 2012. Therefore, they should have preserved the files till the appeals are disposed of.

6.In any event, the learned counsel for the petitioner has handed over one full set of papers to the learned Senior Standing Counsel for the revenue, which shall be passed on to the 2nd respondent, so as to enable him to reconstruct the file.

7.Since the amount was received by the Department, pursuant to the orders passed by the Hon'ble Division Bench of this Court, it cannot be treated as an amount to be paid but it is only an amount, which has been deposited pursuant to the interim orders granted by this Court and such deposit will abide by the final order passed in the said matter. The final order dated 28.03.2017 has been passed in favour of the petitioner. Therefore, the petitioner is entitled for refund of the amount of Rs.3,00,000/- along with interest, if admissible in law.

8.In the result, the writ petitions are allowed and the 2nd respondent is directed to refund the sum of Rs.3,00,000/- which was pre-deposited by the petitioner as a condition precedent for grant of interim order in C.M.A.No.3652 of 2008 dated 28.03.2017 along with admissible interest, if any as per law and effect payment to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kak/maya

To

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

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

+2ccs to Mr.B.Sathish Sundar, Advocate, S.R.No.7841
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.8028

W.P.No.33503 of 2017

SSD(CO)
CS/14/03/18