IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8113 of 2012

Drilcos India Private Ltd.,
rep. by its Director, Mr.S.Rajan,
No.267, SIDCO Industrial Estate,
Ambattur, Chennai-600 098. ... Petitioner

Vs.

The Assistant Commissioner
Chennai IV Division,
Office of the Assistant Commissioner of
Central Excise, Chennai II Commissionerate,
R-40, A-1, TNHB Complex,
Mogappair (East), Chennai-600 037. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein, in Order-in-Original No.101/2009-R, dated 20.10.2009 and quash the same thereby further directing the respondent to sanction the refund claim of Rs.3,84,936/- paid during the period October 2007 to March 2008, with interest.

For Petitioner : Mr.A.N.R.Jayapradap

For Respondent : Mr.K.S.Ramaswamy,
Junior Panel Counsel

O R D E R

Heard Mr.A.N.R.Jayapradap, learned counsel for the petitioner and Mr.K.S.Ramaswamy, learned Junior Panel Counsel for the respondent.

2.After hearing the learned counsel for the petitioner for a considerable length of time, I find that the issue involved in this writ petition would require adjudication in which the disputed question of fact is with regard to time barred claim, apart from the interpretation given by the petitioner as to what would be the relevant date as explained in Explanation (B)(f) of

Section 11B of the Central Excise Act and whether at all the said Explanation would apply to the facts of the present case. The petitioner has cleared goods manufactured by them to ONGC Limited, a Government of India undertaking. They had remitted central excise duty at the time of clearances to ONGC. However, ONGC pointed out that as per the Export Import Policy read with Notification 6 of 2006-C.E., dated 01.03.2006, the clearances made by the petitioner are exempted and therefore, did not pay the central excise portion as contained in the invoice raised by the petitioner. This is how the refund claim has arisen. By the impugned order, the adjudicating authority has rejected the claim on the ground that it is time barred. Apart from that, there is also a finding as regards the interpretation given by the petitioner.

3.Thus, considering the facts and circumstances of the case, it is a matter, where the petitioner should avail appellate remedy available under the Central Excise Act by approaching the Commissioner of Central Excise (Appeals), Chennai-34. However, I find that, even on the date of filing of the writ petition, if the petitioner had filed an appeal, it could have been rejected as time barred, as it was beyond condonable period. This writ petition has been pending since 2012, and though the respondent has been served and several counsels had appeared from time to time, no counter affidavit has been filed. Therefore, considering the peculiar circumstances of case, I find that the petitioner can be granted liberty to file an appeal before the Commissioner of Central Excise (Appeals), Chennai-34, within a period of sixty days from the date of receipt of a copy of this order and if such an appeal is filed, the Commissioner of Central Excise is required to entertain the appeal on merits and decide the same in accordance with law without rejecting the appeal on the ground of limitation. It is made clear that this order has been passed considering the peculiar circumstances of the case and not to be treated as a precedent. One more aspect, which weighed in the minds of the Court to grant the above liberty is on account of supplies effected to Government of India Enterprises and the petitioner is stated to have not received that portion of the invoice amount, which they had remitted to the Department by way of excise duty. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner
Chennai IV Division,
Office of the Assistant Commissioner of
Central Excise, Chennai II Commissionerate,
R-40, A-1, TNHB Complex,
Mogappair (East), Chennai-600 037.

+1cc to Mr.K.S.Ramaswamy, Advocate, S.R.No.8539

W.P.No.8113 of 2012

KS(CO)
CS/22/03/18