In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.14902 of 2018
& WMP.No.17619 of 2018

M/s.Prime Gold International Ltd.,
rep.by its Director Agarwal ...Petitioner

Vs

1.The Assistant Commissioner of
GST & Central Excise, Hosur
Division, Thally Road, Hosur-635109.

2.The Assistant Commissioner of
Central Excise, GST & Central
Excise Division, Buladshahr,
Plot No.3, III Floor, Wegmans
Business Park, KP-III, Greater
Noida-201308. Utter Pradesh. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the notice of demand to defaulter in C.No.IV/16/15/2018 dated 11.6.2018, quash the same and further direct the respondents to permit the petitioner to pay the arrears Rs.46,00,000/- in 24 instalments as prescribed under the Board Circular No.996/6/3/2015-CX dated 28.2.2015 and till such payment, not to give effect to the impugned notice issued by the first respondent.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.V.Sundareswaran, SPC

ORDER

Mr.V.Sundareswaran, learned Senior Panel Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. Though the petitioner has sought to quash the notice of demand issued by the first respondent, the learned counsel for the petitioner would submit that the petitioner would be satisfied if the first respondent considers the representation

of the petitioner dated 10.10.2017 wherein the petitioner requested the Commissioner of GST & Central Excise, Division V Cex Commissionerate, Noida II, III Floor, Wegmass Business Park, KP-III, Greater Noida, U.P., to grant permission to pay the arrears of duty, interest and penalty in 24 equal monthly instalments.

3. The learned counsel for the petitioner also submits that the factory in Noida has been closed down in 2016, that the payments, which have been made by the petitioner, are from the operations conducted in the factory at Krishnagiri and that due to severe financial crisis, they would request reasonable time to be granted to them to pay arrears. The learned counsel further submits that though, in the impugned demand notice, it has been stated that the petitioner has to pay a sum of Rs.87,82,248/- towards duty, Rs.32,11,355/- towards interest and Rs.25,00,227/- towards penalty, the first respondent has not taken into consideration the payments effected by the petitioner between 08.3.2018 and 11.6.2018 totaling to Rs.46,82,248/-. The petitioner would state that the amounts have been remitted on the following dates :

Date	Amount
08.3.2018	Rs.2,00,000/-
08.3.2018	Rs.18,82,248/-
12.3.2018	Rs.1,00,000/-
13.3.2018	Rs.2,00,000/-
23.3.2018	Rs.5,00,000/-
29.5.2018	Rs.12,00,000/-
11.6.2018	Rs.6,00,000/-
Total	Rs.46,82,248/-

4. Thus, it is the submission of the learned counsel for the petitioner that the balance duty payable by the petitioner is Rs.41,00,000/- and if reasonable time is granted, the petitioner would be able to clear the same in monthly instalments.

5. Mr.V.Sundareswaran, learned Senior Panel Counsel would submit that he does not have written instructions from the respondents. But, the fact remains that the petitioner is due and liable to pay arrears of duty, interest and penalty. It is further submitted that the request for the grant of instalments is pending and if this Court is inclined, reasonable time may be granted to the Authority concerned to pass an order on the petitioner's request for payment of arrears of duty, interest and penalty in instalments.

6. Considering the facts and circumstances of the case and the fact that the petitioner's unit at Noida has been closed down and as the petitioner has stated that they paid a sum of Rs.46,82,248/- out of the total dues payable towards duty, this Court is inclined to issue appropriate directions in this writ petition.

7. In the light of the above discussion, the writ petition is disposed of by directing the petitioner to submit a fresh copy of the representation dated 10.10.2017 to the Commissioner of GST & Central Excise, Division V Cex Commissionerate, Noida II, III Floor, Wegmass Business Park, KP-III, Greater Noida, U.P., within a period of three days from the date of receipt of a copy of this order. On receipt of such a copy of the representation dated 10.10.2017, the Commissioner of GST & Central Excise, Division V Cex Commissionerate, Noida II, III Floor, Wegmass Business Park, KP-III, Greater Noida, U.P. shall verify the details and more particularly the stand taken by the petitioner that they already paid a sum of Rs.46,82,248/- between 08.3.2018 and 11.6.2018 and pass orders on merits and in accordance with law within a period of four weeks from the date, on which, the representation is submitted. Till then, the first respondent shall not initiate any coercive action against the petitioner pursuant to the demand notice dated 11.6.2018. It is made clear that de hors this direction, the petitioner shall continue to make regular payments, which hitherto they have been making and the payments shall be received by the first respondent. No costs. Consequently, the connected WMP is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

RS

To
1.The Assistant Commissioner of GST & Central Excise, Hosur Division, Thally
Road, Hosur-635109.

2.The Assistant Commissioner of Central Excise, GST & Central Excise
Division, Buladshahr, Plot No.3, III Floor, Wegmana Business Park, KP-III,
Greater Noida-201308. Utter Pradesh.

3.The Commissioner of GST & Central Excise, Division V Cex
Commissionerate, Noida II, III Floor, Wegmass Business Park,
KP-III,
Greater Noida, U.P.

+1 CC to Mr.K. Jayachandran, Advocate sr 38752.
+1 CC to Mr.V. Sundareswaran, Advocate sr 38981.

VGII(CO)
GSP(04/07/2018)