

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.06.2018

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THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.39433 of 2002

Steel Authority of India Limited

Salem Steel Plant, Salem 13

represented by its

V. Nandagopal,

Dy. General Manager (F&A)

..... Petitioner

Vs.

1. The Secretary to the Govt. of India
Ministry of Science and Technology,
Department of Science and Technology,
Technology Bhavan, New Mehrauli Rd,
New Delhi - 110 016

2. The Secretary to the Govt. of India,
Ministry of Finance,
Department of Economic Affairs,
North Block,
New Delhi.

3. Industrial Development Bank of India,
Nariman Bhavan,
Bombay 400 021

4. Reserve Bank of India,
6, Sansad Marg,
New Delhi - 110 001

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the First Respondent in F.No.16/9/93-NRI and quash the impugned order dated 02.07.2002 and consequently direct the First Respondent to grant refund of Cess amount to the Petitioner.

For Petitioner : Mr.R. Venkata Narayanan for
M/s Subbaraya Aiyar Padmanabhan

For R.1 & R.2 : Mr.J. Madana Gopal Rao
SCGSC

For R.3 & R.4 : Served. No appearance

ORDER

Heard Mr.R. Venkata Narayanan, learned counsel for the Petitioner and Mr.J. Madana Gopal Rao, learned Central Government Standing Counsel for the Respondents.

2. The Petitioner had imported certain machineries for which cess was levied by the Government of India at the rate of 5% of the value of the knowledge imported in any form under the provisions of the Research and Development Cess Act, 1986.

3. According to the Petitioner, the machineries imported were sale simpliciter and do not involve any technology, but the Petitioner had paid cess of 5% which ought not to have been collected and hence refund of the same has been sought in this Writ Petition.

4. The definition of "technology" in the Research and Development Cess Act, 1986, is extracted below:-

" 2(h) "technology" means any special or technical knowledge or any special service required for any purpose whatsoever by an industrial concern under any foreign collaboration, and includes designs, drawings, publications and technical personnel."

5. Learned counsel appearing for the Petitioner relying on judgment of the Calcutta High Court in Indian Oxygen and Another vs Union of India [(92) Calcutta Weekly Notes 761] contends that the petitioner being a similarly placed person, was entitled to the refund of cess paid for import of machineries as ordered in that case. Suffice here to refer paras 8 and 9 of that judgment which are extracted below:-

" 8. To my mind, the definition of technology clearly demonstrates that the foreign collaboration itself must be distinct from the knowledge

imported or the special service imported. The definition clarifies that the importation of knowledge or service is under the foreign collaboration, and as such, the foreign collaboration itself would be distinct from, and wider than, the isolated instances of importation of knowledge or service. It is conceivable that there might be a foreign collaboration which involves only importation of technical knowledge or special service and that such importations are made from time to time, or from place to place upon a span sufficiently wide so as to cover the meaning of the phrase 'foreign collaboration'. In the instant case, however, there is no such width or importation and it is only in regard to purchase of certain machinery that supervising personnel were sought to be brought from the foreign sellers.

9. An agreement for sale cannot be a foreign collaboration within the meaning of Section 2(h) of the said Act. A seller does not work along with or together with the purchaser. There is no element of partnership or joint venture involved in a contract for sale, which has always been clearly distinguished from a contract in the nature of a partnership or a joint venture. The contract for purchase of the machinery from the selling concerns in the United Kingdom, Switzerland and West Germany cannot in any view of the matter be termed as a foreign collaboration, or three foreign collaborations with Indian Oxygen Ltd.

6. Learned counsel for the Petitioner further submitted that this Court by an order dated 07.08.2001 in the earlier Writ Petition W.P.No.5276 of 1995 filed by the Petitioner had directed the First Respondent to consider the representation of the Petitioner for refund of cess and pass orders and the said representation submitted by the Petitioner in pursuance thereof

was rejected by the First Respondent by Proceedings dated 02.07.2002, which reads as follows:

" 3. Pursuant to the directions given by the Hon'ble Madras High Court, this Department has considered the representations dated 19.10.1993 and 28.04.1994 submitted by you, Steel Authority of India Limited (the Petitioner), as cited in the above mentioned order. In the light of the provisions of the Research and Development Cess Act, 1986 and the Research and Development Cess Rules 1987, and all the facts and circumstances brought out by the Petitioner in the representation, it is regretted that the request of the Petitioner, Steel Authority of India Limited, for the refund of the Cess remittances of Rs.44.93 lakhs made on various dates between 31.03.1989 and March 1993 cannot be acceded to by the Department.

7. On a perusal of the aforesaid order, which is impugned in this Writ Petition, it is evident that the First Respondent has not given any reason for coming to the conclusion that the import of machineries by the Petitioner involved "technology" within the meaning of Section 2(h) of the Research and Development Cess Act, 1986. It is needless here to recapitulate the settled legal position reiterated by the Constitution Bench of the Hon'ble Supreme Court in S.N. Mukherjee vs Union of India (AIR 1990 SC 1984) that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. More so, in this case, when the Petitioner has cited that a similarly placed person had been given relief by a High Court, it was incumbent upon the concerned authority to have considered the same and given a specific finding as to whether the Petitioner is entitled to the same benefit.

8. In the aforesaid circumstances the impugned order dated 02.07.2002 passed by the First Respondent, which cannot be sustained, is quashed and the matter is remitted to the First Respondent for fresh determination and to pass reasoned orders on merits in accordance with law after affording an opportunity

of personal hearing to the Petitioner and communicate the decision to the Petitioner and file report of such compliance before the Registrar (Judicial) of this Court on or before 30.09.2018. It is made clear that no view has been expressed by this Court on the correctness or entitlement of the claim made by the Petitioner.

9. The Writ Petition is disposed of on the aforesaid terms. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Govt. of India
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+1cc to M/s Subbaraya Aiyar Padmanabhan, Advocate sr.no.41809
+1cc to Mr.J. Madana Gopal Rao, Advocate sr.no.41808

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nr 16/07/2018