BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.2142 of 2018
and
W.M.P.(MD)Nos.2388 and 2389 of 2018

M/s.Industrial Mineral Company (IMC),
Represented by its Manager (Exports),
Ashok Kumar ... Petitioner

-Vs-

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 001.

2.The Assistant Commissioner of Customs (Refunds),
Custom House, New Harbour Estate,
Tuticorin-628 001.

3.The Deputy Commissioner of Customs Exports,
Tuticorin. ...Respondents

(R3 is suo motu impleaded as per the order of this Court dated 19.03.2018 in W.P.(MD)No.2142 of 2018)

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarifed Mandamus, calling for the records relating to the impugned communication made by the second respondent in C.No.VIII/20/249/2017-RF, dated 27.10.2017, insofar as the petitioner's present claim is concerned and quash the same as illegal and beyond Judicial Discipline and consequently direct the second respondent herein to accept the subject refund application dated 26.09.2017, and to settle and release the pending Excess Export Duty amount of Rs.43,98,264/-, collected by the respondent herein, claimed by the petitioner vide Receipt No.8767, dated 26.09.2017, in the light of the order of Hon'ble Customs Excise & Service Tax Appellate Tribunal vide Final Order No.41412/2015, dated 14.10.2015.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.R.Aravindan

ORDER

Heard the learned counsel on either side.

2.By consent of both parties, the main Writ Petition itself is taken up for final disposal.

3.The petitioner is a registered 100% EOU and manufacturer and exporter. The export consignment of the petitioner was classified in this case as falling under CTH 26140010,. by the respondent. But the petitioner's contention is that they fall under CTH 26140020. Since, there was a dispute in the matter, the petitioner paid the export duty under protest.

4.Later, the writ petitioner applied for refund. The second respondent herein took the stand that the claim of the writ petitioner was yet to be adjudicated and therefore, the question of effecting refund was premature. Orders were passed to that effect. They are assailed in this Writ Petition.

5.When the matter was taken up for disposal, this Court took the view that the stand of the second respondent was technically correct. However, in order to render substantial justice, this Court suo motu impleaded the Adjudicating Authority and directed him to pass orders. The writ was kept pending.

6.When the matter was taken up today, the learned Standing Counsel appearing for the respondents produced a copy of the order passed by the Adjudicating Authority rejecting the stand of the petitioner. This Court went through the order dated 21.03.2018 passed by the Adjudicating Authority. The Adjudicating Authority after briefly setting out the facts of the case formulated the issue, as to whether the Ilmenite exported by the petitioner was upgraded (beneficial ilmenite) classifiable under CTH 26140020 or Ilmenite unprocessed classifiable under CTH 26140010. The Adjudicating Authority concluded that in the present case, there was no enhancement of TiO2 content or any other process involved and the Ilmenite separated from the Beach sand was cleared as such and does not merit to be considered as upgraded (beneficiated Ilmenite including ground). But in all fairness, the Adjudicating Authority had mentioned that the case on hand is similar to that of V.V.Minerals Vs. CC Tuticorin and that the final order No.41412 of 2015, passed by the Customs, Excise & Service Tax Appellate Tribunal in the said case has been questioned by the Department by filing C.A.No.007278/2016, before the Hon'ble Supreme Court and that the issue is yet to reach a finality. Therefore, the goods covered under shipping bills of the petitioner were rightly classified under under customs tariff item CTH 26140010 under the provisions of Section 17(B) of the Customs Act, 1962.

7.The petitioner has enclosed a copy of the final order No.41412 / 2015 dated 14.10.2015 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, in the typed set of papers. There is absolutely no doubt in the mind of this Court that the case on hand is similar to the case that was allowed in favour of the assesse by the Customs, Excise & Service Tax Act. In fact, this Court need not undertake the exercise of establishing the similarity between the two cases. The Adjudicating Authority has himself called it as similar to the case on hand.

8.This Court is of the view that when the order passed by the Tribunal has not been stayed or set aside by the Hon'ble Supreme Court, it is the bounden duty of the Adjudicating Authority to follow the law laid down by the Tribunal. Since a binding decision has not been followed by the Adjudicating Authority in this case, this Court can interfere straight away without relegating the assesse to file an appeal.

9.In this view of the matter, the orders dated 21.03.2018 passed by the Adjudicating Authority shall stand quashed.

10.The learned counsel appearing for the petitioner on instructions offers to furnish immovable property security in respect of the re-fund amount. The said security shall not be encumbered till the issues are finally resolved by the Hon'ble Supreme Court. The Adjudicating Authority will be at liberty to pass revised orders based on the outcome of the decision of the Hon'ble Supreme Court. The second respondent is directed to re-fund the amount in question to the petitioner within a period of four weeks from the date of receipt of a copy of this order, after taking immovable property security from the petitioner as indicated above.

11.The Writ Petition stands allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 001.
2.The Assistant Commissioner of
Customs (Refunds),
Custom House, New Harbour Estate,
Tuticorin-628 001.
3.The Deputy Commissioner of Customs Exports,
Tuticorin.
+1cc to Mr.A.K.Jayaraj, Advocate, SR.No.57911.
+1cc to Mr.R.Aravindan, Advocate, SR.No.57188.

W.P.(MD)No.2142 of 2018
22.03.2018

tsg

RAM/KK/SAR 4/03.05.2018/3P/6C