BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P(MD)No.21882 of 2018
and
W.M.P(MD)No.19820 of 2018

M/s.Dalmia Cements (Bharat) Limited,
Dalmiapuram,
Trichy-621651,
Represented by its Assistant Executive Director-Legal,
Mr.T.A.Srinivasen ... Petitioner

vs.

1)Union of India,
Through the Secretary (Revenue)
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110001.

2)The Commissioner of Customs,
No.1, Williams Road,
Melapudur, Cantonment,
Tiruchirappalli,
Tamil Nadu 620001.

3)The Assistant Commissioner of Customs,
Customs Division No.4,
First Line Beach Road,
Nagapattinam-611001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the order in Original No.46/2018 dated 16.08.2018 issued by the 3rd respondent and quash the same and consequently direct the respondent to refund the sum of Rs.7,63,71,266/- (Rupees Seven Crores Sixty Three Lakhs Seventy One Thousand Two Hundred and Sixty Six) to the petitioner along with consequential interest.

For Petitioner : Mr.Devanath, M.P for
Mr.T.Antony Arul Raj
For R1 : Mr.S.Karthik
For R2 & R3 : Mr.R.Aravindan

ORDER

Prayer : To issue a Writ of Certiorarified Mandamus to call for the records relating to the orders passed in Order in Original No.46/2018 dated 16.08.2018 issued by the 3rd Respondent and quash the same and direct the respondents to refund a sum of Rs.7,63,71,266/- to the petitioner along with consequential interest.

1. Heard the counsel for both sides. The issue arose out of a classification dispute. The classification dispute in the petitioner's case got settled in favour of the Revenue by the Order in Original No.04/2013 dated 31.12.2013 of the second respondent Original Authority. Aggrieved, the petitioner had preferred an appeal before the Tribunal. As required and in terms of Section 129-E of the Customs Act, 1962, an amount of Rs. 7,63,71,266/- was paid as pre-deposit. The pre-deposit is paid as a pre-condition for admitting the Appeal before the Appellate Tribunal.

2. During the same period, many other demand notices were issued by the Revenue to various importers across India on the same classification issue. On appeal, different benches of the Tribunal had given contrasting decisions some in favour of revenue and some in favour of the importers. In view of the contrasting decision delivered by different benches of the Tribunal, the matter was referred to a larger Bench of the Tribunal.

3. During the hearing of the references, it was brought to the notice of the larger bench that the Hon'ble Supreme Court had admitted Civil Appeals Nos.28937 of 2014 and 9725 of 2014 filed by M/s.Maruti Ispat Energy Private Limited and others on the same issue against the adverse orders of the Tribunals. Holding that the matter is sub judice, the larger bench disposed the reference by granting liberty to approach them again after the disposal of the Civil Appeals before the Hon'ble Supreme Court, if needed.

4. On the basis of the decision of the larger bench, the petitioner's case was disposed of by the Tribunal by holding that the the appeals require denova consideration by the adjudicating authority on the basis of the outcome of the decision of Hon'ble Supreme Court in the case of M/s.Maruti Ispat Energy Private Limited. Accordingly, the impugned orders of the Original Authority were set aside and the matter remanded back to the Original Authority for deciding afresh upon the final decision of the Hon'ble Supreme Court.

5. In the result, the confirmed demand by way of the Order in Original No.04/2013 dated 31.12.2013 passed against the Petitioner got set aside. Admittedly, the Orders of the Tribunal are not appealed against and have become final. Therefore, the petitioner had sought refund of the pre-deposited amount paid as a pre-

condition of Appeal. The respondents had rejected the request of refund vide the Order in Original No.46/2018 dated 16.08.2018 impugned in this Writ Petition on the ground that the appeal was not disposed of in favour of the petitioner. They rely on wordings of para 26 of the Circular No.1053/02/2017-CX dated 10.03.2017 in support of their stand.

6. The case of the petitioner is peculiar in nature. The confirmed demand against them were set aside not on merit but on the ground of the same being heard before the Hon'ble Supreme Court and therefore held to be out of their realm. On a careful reading of Section 129-E of the Customs Act, 1962 and the clarifications issued by the Board, it is noticed that this specific circumstance is not contemplated in law. However, on a fair interpretation of the statute and the clarifications, it can be safely concluded that there is no involuntary requirement of payment pre-deposit under the Customs Act, 1964 in the absence of an order of confirmed demand. When there can be no requirement of pre deposit, the department cannot hold back the pre-deposit amount in such circumstances.

7. Therefore, in my opinion, once the department chose not to appeal against the Orders of the Tribunal setting aside the order of confirmed demand and accepted the remand and placed the same in call book for deferred adjudication, they are obligated to release the pre-deposit on the basis of a simple request letter even without the pursuit of Section 28 of the Customs Act, 1962.

8. Accordingly, the impugned Order in Original No 46/2018 dated 16.08.2018 issued by the 3rd Respondent is quashed and the petitioner is entitled for the release of pre-deposit along with applicable interest.

With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1) The Secretary (Revenue), Union of India,
Department of Revenue,
Ministry of Finance,
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New Delhi-110001.

2)The Commissioner of Customs,
No.1, Williams Road,
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Cantonment,
Tiruchirappalli,
Tamil Nadu 620001.

3)The Assistant Commissioner of Customs,
Customs Division No.4,
First Line Beach Road,
Nagapattinam-611001.

+ 1 CC TO Mr.T.ANTONY ARUL RAJ, ADVOCATE IN SR No. 92516

BALA
TE/BK/SAR-2 : 29/11/2018 : 4P/5C

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