BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018
(Reserved on 04.10.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.10208 and 10209 of 2011
and
M.P(MD)Nos.1 and 1 of 2011

M/s.Shree Ambika Sugars Ltd.,
Kottur Village,
Tuhili-609804,
Thiruvidaimarudur Taluk,
Thanjavur District,
Tamil Nadu. ... Petitioner in W.P.10208/2011

M/s.Thiru Arooran Sugars Limited,
Thirumandankudi,
Papanasam Taluk,
Thanjavur District-612301,
Tamil Nadu. ... Petitioner in W.P.10209/2011

vs.

1)Joint Secretary,
Ministry of Finance,
Department of Revenue,
IVth Floor, Jeevan Deep Building,
Parliament Street, New Delhi.
2)The Commissioner of Central Excise(Appeals),
No.1, Williams Road,
Cantonment,
Tiruchirappalli-6520 001.
3)The Deputy Commissioner of Central Excise,
Central Excise Division,
Thanjavur-613 007. ... Respondents in both WPs

COMMON PRAYER:
Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the order passed by 1st respondent vide Order - in - Revision Nos.520 and 519/2011 - Cx dated 24th May, 2011 quash the same.

For Petitioner : Ms.R.Charulatha for Mr.Lakshmi Kumaran
For R1 : Mr.P.Subbiah ,CGSC
For R2 & R3 : Mr.B.Vijay Karthikeyan

COMMON ORDER

WP(MD)No.10208 of 2011:-

Prayer:- To issue a Writ of Certiorari, calling for the records relating to the orders passed in Order in Revision No.520/2011-CX dated 24.05.2011 issued by the 1st Respondent and quash the same.

WP (MD) No 10209 of 2011

Prayer:- To issue a Writ of Certiorari, calling for the records relating to the orders passed in Order in Revision No.519/2011-CX dated 24.05.2011 issued by the 1st Respondent and quash the same.

2.Heard the counsels for the petitioner and the respondents and perused the records and their submissions.

3.The petitioners M/s.Shri Ambika Sugars Limited and M/s.Thiru Arooran Sugars Limited had filed rebate claims respectively for Rs. 9,36,360/- and Rs. 45,25,740/- towards the excise duty and sugar cess paid on 5220 MT and 1080 MT of White sugar in terms of Rule 18 of the Central Excise Rules, 2018. Rule 18 allows rebate of duty on export goods cleared on payment of duty at the time of clearance from the factory gate or warehouse.

4.It is averred that the goods were cleared from the factory to the Chennai Port Trust Warehouse between 17.06.2006 and 19.06.2006 vide duty paid invoices. ARE1 Nos.31/2006-07 dated 05.09.2066 and ARE1 Nos.05/2006-07 dated 05.09.2006 were issued by the respective petitioners for export of the above quantities of white sugar to Bangladesh. Commercial invoices were issued on 05.09.2006 covering the sale of the subject goods to M/s MMTC Limited. Sugar was a canalized item and M/s.MMTC are the canalizing agent. As such, M/s.MMTC are the merchant exporter and the petitioners are supporting manufacturers who can claim rebate on establishing the proof of export in terms of Notification No 19 /04 CE (NT) dated 06.09.2004 and upon the issue of no objection certificate by MMTC Ltd.

5.M/s MMTC Ltd had issued the NOC to both the parties and the petitioners had filed the rebate claim dated 15.06.2007, 21.06.2007 on 02.07.2007 respectively before the 3rd respondent. While scrutinizing the claim, the 3rd respondent had found certain discrepancies. The ARE1s filed by the petitioners did not mention the details of payment of duty and the details of duty paid invoice as required under column 10 of the document. The ARE1s mentioned that the subject goods is cleared without payment of duty and under Letter of undertaking in form UT-1. The duty payment challans were dated July 2016 whereas in the ARE1, it is mentioned that the duty is paid under Chennai Port invoice dated 05.09.2006. The 3rd respondent found the discrepancies alarming and found correlation of the duty paid on nature of the exported goods were not possible and refused to condone the discrepancies and rejected the rebate claim under due process of law. The rebate claim portion of sugar cess paid were also rejected on the ground of ineligibility under the laws. The clarifications issued by the Board and the Government

Orders were additionally cited for rejecting the sugar cess.

6.This position was affirmed by the 1st and 2nd respondents who were the reviewing authority and the lower appellate authority respectively. The authorities found that the discrepancies in the documents produced are too alarming to sit on judgement over the correlation of the duty paid goods to the ones exported by the canalizing agent and rejected the claim.

7.The petitioners would submit that the discrepancies is condonable. That they are eligible for rebate as the proof of export of that quantity matching with the duty paid documents/invoices is sufficient proof for claim of rebate. They also argue that the cess are also duties and rebate for cess have to be sanctioned under the law and relied on decision of the Hon'ble High Court of Karnataka in TVS Motor Co.Ltd vs UOI 2015 (323) ELT 57 (KAR.)

8.It is true that the discrepancies in the documents submitted by the petitioners is too alarming to be condoned by an adjudicating authority. Interestingly, revenue has rejected the rebate claim only on the ground of impossibility of correlation of the duty paid goods with the export goods from the documents and the records of the rebate claim. However, revenue had not disputed the fact of availability of proof of shipment of the subject quantity of white sugar to Bangladesh by the petitioners through the Canalizing Agent and the ARE1 is endorsed by the proper officer of customs to that effect. When the export is not disputed by the revenue, the rebate claim cannot be rejected on the ground of procedural infractions. If documents are rejected on the ground of impossibility of correlation, mala-fide on the part of the applicant has to be established by the Department to reject the rebate claims. No exporting of taxes is the underlying principle behind the rebate schemes and therefore rejection of huge claims when export is proved with the ARE1 being endorsed by the proper officer of Customs will defeat the very objective of the scheme.

9.Regarding the eligibility of sugar cess as rebate, it is no more res integra as rightly pointed out by the petitioners. The decision of the Hon'ble high Court of Karnataka in the case of in TVS Motor Co.Ltd vs UOI 2015 (323) ELT 57 (KAR.) squarely applies to the instant case

10.On perusal of the records of the case, it is seen that the petitioners have filed an array of transactional documents to co-relate the export endorsed in the ARE1 by the proper officer of customs with the duty paid invoices issued at the factory during June 2006. The department also have the means to collect the trail of goods cleared from the factory to the Chennai Port Trust Warehouse and sale to M.s MMTC Ltd and thereafter to the Port for shipment and movement onboard vessel.

11.In the circumstances, the ends of justice will be met if the case is remitted back to the original authority for fresh consideration in the light of the observations made in this order after giving opportunity of hearing to the petitioners and to file documents to establish their claims.

Accordingly, these Writ Petitions allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1)Joint Secretary,
Ministry of Finance,
Department of Revenue,
IVth Floor, Jeevan Deep Building,
Parliament Street, New Delhi.

2)The Commissioner of Central Excise(Appeals),
No.1, Williams Road,
Cantonment,
Tiruchirappalli-6520 001.

3)The Deputy Commissioner of Central Excise,
Central Excise Division,
Thanjavur-613 007.

- 1 CC TO Mr.B.VIJAY KARTHIKEYAN , ADVOCATE IN SR No. 92536.
- \+ 2 CCs TO Mr.LAKSHMI KUMAR , ADVOCATE IN SR No.92609.
- \+ 1 CC TO Mr.P.SUBBIAH , ADVOCATE IN SR No. 92900.
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Order made in
W.P(MD)Nos.10208 and 10209 of 2011
29.10.2018