IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.11670 & 3594 of 2011
and
M.P.Nos.1 & 1 of 2011

M/s. Hyundai Motor India Limited,
Rep. By its General Manager-Taxation,
Mr.B.C.Datta,
Plot No.H1, SIPCOT Industrial Park,
Irrungattukottai, Sriperumpudur Taluk,
Kancheepuram District. ...Petitioner in both WPs

Vs

1. The Department of Revenue,
Ministry of Finance,
Rep by its Joint Secretary,
14, Hudco Vishala Bldg "B" Wing,
6th floor Bhikaji Cama Place,
New Delhi - 110066. ...1st Respondent in both WPs

2. The Additional Commissioner,
Government of India,
Ministry of Finance,
The Large Tax Payer Unit,
No.1775, Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600101. ...2nd Respondent in W.P.No.11670/2011

3. The Large Tax Payer Unit,
No.1775, Inner Ring Road,
Anna Nagar Western Extension,
Chennai-600 101. ...2nd Respondent in W.P.3594 of 2011

Prayer in WP.No.11670 of 2011 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records comprised in Order No.262/2011-CX dated 23.03.2011 on the file of the first respondent and quash the same.

Prayer in WP.No.3594 of 2011 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records comprised in Order No.1213/10-CX dated 07.07.2010 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Muthuvenkataraman
(in both WPs) and Ms.Kanthivisalakshi

For Respondents: Mr.A.P.Srinivas
(in both WPs) Senior Standing Counsel

C O M M O N O R D E R

When the Deputy Commissioner, Poonamalle Division, had passed orders-in-original sanctioning the entire amount of rebate inclusive of BED, NCCD, education cess and automobile cess, as claimed by the applicants, the orders-in-original came to be challenged by the second respondent, before the Commissioner of Appeals, insofar as it relates to the extent of automobile cess is concerned. Aggrieved against the said orders, insofar as it relates to sanctioning of the claim of rebate in respect of automobile cess is concerned, the second respondent had preferred appeals before the Commissioner (Appeals), Chennai. These orders came to be allowed through orders-in-appeal dated 18.02.2008. Aggrieved against the orders-in appeal, a revision application was filed under Section 35 EE of the Central Excise Act, 1944 before the first respondent herein, and by an order dated 07.07.2010, the orders-in-appeal passed by the Commissioner (Appeals) was upheld and the revision application filed by the petitioner came to be rejected. As against the rejection orders in the revision application, the present writ petition in W.P.No.3594 of 2011 has been filed.

2. In the meantime, show cause notices under Section 11 A of the Central Excise Act, 1944 was issued by the second respondent pending the appeal before the Commissioner (Appeals), to which the petitioners had submitted their replies. However, the replies were rejected and the demand in the show cause notices were made. The petitioners' appeal against these orders before the Commissioner (Appeals) and the revision before the first respondent also came to be rejected, which is under challenged in the present writ petition in W.P.No.11670 of 2011.

3. The learned counsel for the petitioner straightaway drew the attention of this Court to the decision of the High Court of Karnataka in 2015-TIOL-1478-High Court, Karnataka and submitted that the issue

involved in the present writ petitions is covered in the said decision. He would further draw the attention of this Court to the findings of the 1st respondent and submitted that the question of unjust enrichment under Section 11B of Central Excise Act, would not arise, as the claim is for rebate and the incidence of duty on the goods exported is borne by the assessees.

4. The learned senior standing counsel appearing for the respondents, by relying on the averments made in the counter submitted that so far as the Notification No.19/2004 - CE(NT) dated 06.09.2004 is concerned, the same does not specify automobile cess as "duty" for the purpose of granting rebate. He would further, submit that Section 11B of the Central Excise Act, 1944, distinguishes the normal refund claim with that of the cases mentioned therein and accordingly the petitioner cannot be equated with such cases. Therefore, the learned senior standing counsel for the respondents submitted that the petitioner's submissions that the amount of duty paid for the exported goods need not require the test of unjust enrichment is incorrect.

5. I have carefully considered the submissions made by the learned senior standing counsel appearing for the respondents.

6. Insofar as the submissions of the issue of unjust enrichment under Section 11B of the Central Excise Act is concerned, it is seen that the department had not challenged the order of the original authority on this ground. Even otherwise, it was held by the original authority that since the claim is for rebate and the incidence of duty on the goods exported is borne by the assessee, the question of unjust enrichment does not arise as per Section 11B(2)(a) of the Central Excise Act. I am unable to take any contrary view on such a submission, more particularly in the light of the fact that the department has not questioned his finding.

7. As against the other ground raised by the petitioner is concerned, it is not in dispute that the issue with regard to levy of automobile cess was a subject matter before the High Court of Karnataka in TVS Motor Co. Ltd case (supra) and the High Court had held as follows:

> 30. A bare reading of Rule 3 of Automobile Cess Rules would indicate that provisions relating to collection of duty are indeed applicable to the Automobile Cess levied under the notification No.923 (E) dated 28.12.1983 which notification came to be superseded by the notification SO No.247(E) dated 22.03.1990 and as such, the Automobile Cess has been collected as a duty of excise in terms of the

> provisions of Central Excise Act. Thus, reference to Central Excise Act, 1944 in the notification dated 06.09.2004 would also include Cess collected as a duty of excise. That apart, automobile cess cannot be levied on the goods exported or in other words, when it is levied and rebate is claimed are required to be refunded when the goods are so exported.

The above observation is self-explanatory to the effect that automobile cess cannot be levied on the goods exported. Endorsing the decision of the High Court of Karnataka in the aforesaid case, this Court is also of the view that the order passed by the Appellate and Revisional Authority, insofar as it relates to the levy of automobile cess is concerned, cannot be sustained.

8. In the light of the above, the order of the first respondent dated 07.07.2010 cannot be sustained and accordingly, the same stands quashed. W.P.No.3594 of 2011 thus, stands allowed.

9. Pursuant to the impugned order in the writ petition, the respondents herein, had issued order-in-original dated 10.11.2008, seeking for recovery of erroneous rebate of automobile cess paid on exported goods, which order is under challenge in W.P.No.11670 of 2011. In view of the orders passed in W.P.No.3594 of 2011, the consequential orders impugned in the W.P.No.11670 of 2011 cannot be sustained. For all the foregoing reasons, the order No.1213/10-CX dated 07.07.2010 on the file of the first respondent is quashed. Consequently, the concerned authority now the respondents herein, shall refund the automobile cess recovered on the ground of erroneous rebate paid on the exported goods to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. In these terms, the Writ Petition No.11670 of 2011 stands allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Department of Revenue,
   Ministry of Finance,
   Rep by its Joint Secretary,
   14, Hudco Vishala Bldg "B" Wing,
   6th floor Bhikaji Cama Place,
   New Delhi - 110066.

2. The Additional Commissioner,
   Government of India,
   Ministry of Finance,
   The Large Tax Payer Unit,
   No.1775, Inner Ring Road,
   Anna Nagar Western Extension,
   Chennai - 600101.

3. The Large Tax Payer Unit,
   No.1775, Inner Ring Road,
   Anna Nagar Western Extension,
   Chennai-600 101.

W.P.Nos.11670 & 3594 of 2011
and
M.P.Nos.1 & 1 of 2011

srg 01/10/2019