IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.15265 of 2016

M/s.Dollar Company Pvt Ltd
Thiruvenkadam,
No.1, De Silva Road,
Mylapore, Chennai 600 004.
rep. by its Managing Director D.Parthasarthy
..Petitioner

Vs.

1.The Chief Commissioner of Central Excise,
Uthamar Gandhi High Road,
Chennai – 600 034.

2.The Commissioner of Central Excise,
26/1, M.G.Road, Chennai – 600 034.

3.The Deputy Commissioner of Central Excise
"C" Division, Chennai-I, Commissionerate
Chennai. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 3rd respondent to refund the amount ordered by the 2nd Respondent in order No.A.No.60 AND 61/20129(M-1) dated 31.10.2012 within a reasonable time and also pay the petitioner interest for the delay caused in granting the refund amount.
(Prayer Amended as per order dated 30.08.2016 by this Court in WMP.No.25796 of 2016 in WP.No.15265 of 2016)

For Petitioner : Mr.T.Ravi Kumar

For Respondents: Mr.A.P.Srinivas
Standing Counsel

O R D E R

The petitioner has sought a mandamus directing the 3rd respondent, Deputy Commissioner of Central Excise to refund the amount as per appellate order of the 2nd respondent dated 31.10.2012 within a time frame to be fixed by the Court.

2.The petitioner appears to have advanced several requests to the authorities seeking a refund of an amount of Rs.29,860/- but to no avail and has hence approached this Court seeking a direction in this regard.

3.The petitioner had claimed abatement for the period 01.07.2000 to 30.06.2001 towards the sale value of medicaments, that had been rejected by order dated 27.09.2003. The 1st appellate authority had set aside the order-in-original, pursuant to which the petitioner sought refund. Though the refund was sanctioned, the assessing authority transferred the amount to the Consumer Welfare Fund on the ground that the petitioner had unjustly enriched itself. An appeal was filed before the 1st appellate authority who rejected the same by order dated 23.01.2007 on the ground of insufficiency of evidence. In 2nd appeal, the Customs, Central Excise and Service Tax Appellate Tribunal (in short 'CESTAT'), by order dated 15.01.2010 remanded the matter to the original authority for decision afresh.

4. The assessing authority once again rejected the refund claim, as against which an appeal was filed which was allowed by the 1st appellate authority by order dated 31.10.2012 stating categorically that the refund is not hit by the principle of unjust enrichment. This order has become final and in my view, there ends the matter. In fact the counter, at paragraph 5 records this position.

5. It is thus incumbent upon the assessing authority to pass a consequential order of relief and grant the refund.

6. In the light of the admitted position that the order of the CESTAT has attained finality, nothing further remains in the matter except to issue a mandamus directing the 3rd respondent to refund the amount of Rs.29,860/- along with interest in terms of Section 11B of the Central Excise Act within a period of four weeks from the date of issuance of this order.

7.This writ petition is allowed in the aforesaid terms.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Commissioner of Central Excise,
Uthamar Gandhi High Road,
Chennai - 600 034.

2.The Commissioner of Central Excise,
26/1, M.G.Road, Chennai - 600 034.

3.The Deputy Commissioner of Central Excise
"C" Division, Chennai-I, Commissionerate
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, SR.No.77924
+2cc to Mr.T.Ravi Kumar, Advocate, SR.No.77235

W.P.No.15265 of 2016

Kak(10/09/2019)