IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.09.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P.No.3645 of 2012
MP.No. 2 of 2012

M/s. IOCEE Exports Ltd.,
Represented by its Authorised Signatory
Ganesh Patwari ...Petitioner

--Vs--

1.Union of India,
Represented by its Joint Secretary
to Government of India
(Revision Application), Ministry of
Finance, Department of Revenue,
No.14, HUDCO Vishala Building, 6th Floor,
Bhikaji Cama Place, New Delhi-110 066
2.The Commissioner of Central Excise,
Chennai I Commissionerate, No.26/1,
Mahatma Gandhi Road, Nungambakkam
Chennai-600034
3.The Maritime Commissioner,
Commissionerate of Central Excise,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034 ... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in and connected with order No.1611/11-Cx dated 16.12.2011, quash the same and further direct the 2nd respondent to grant rebate as per claims dated 16.06.1995 and 08.02.1994.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.T.Pramod Kumar Chopda
Senior Standing Counsel

O R D E R

The petitioner is an exporter and has admittedly exported twenty numbers of Royal Enfield 346.C.C.Motercycles from a dealer of Royal Enfield Motors Ltd., one Raja Motors, based at Trichy. The exports were occasioned on 08.02.1994 and 16.06.1995. The petitioner sought the benefit of rebate in terms of Rule 12 of the Central Excise Rules, 1944 basing the claim on AR-4 Forms.

2. A show cause notice was issued on 28.11.1995, putting the petitioner to notice as to the proposed rejection of the rebate claims. Though contested by the petitioner, an order-in-original was passed on 12.09.1996 rejecting the claims.

3. According to the petitioner, this order-in-original was not received by it and was only later received pursuant to a request made under the Right to Information Act, on 25.04.2008. An appeal was filed before the first appellate authority on 13.06.2008. The first appellate authority i.e., the Commissioner of Central Excise (Appeals) considered the issue of whether the appeal was time barred and held the issue in favour of the petitioner noting that there was nothing on record to indicate that the order-in-original had been served upon the petitioner.

4. On merits, he stated that the violation committed by the petitioner, in exporting the consignments through dealer and not direct from the premises of the manufacturer was only procedural, if at all, and would not stand in the way of the rebate sought. The appeal was thus, allowed by order dated 26.03.2010. As against the same, a revision application was filed by the revenue before the Government. The Revisional Authority passed an order dated 21.12.2011, adverse to the petitioner on both issues, condonation of delay in filing of appeal as well as on merits, as against which the present writ petition is filed, raising three issues arising for consideration:

(i) Whether the appeal filed before the Commissioner of Central Excise (Appeals) was time barred by time

(ii) Whether reliance on the provisions of Section 27 of the General Clauses Act, 1982 by the Revenue is well founded in the present case and

(iii) Whether the claim for rebate is liable to be accepted in terms of Rule 12 of the Central Excise Rules, 1944.

5. Adverting to the first issue, the sequence of dates and events in this matter is fortunately and fairly admitted by both learned counsel (i) The exports were occasioned on 08.02.1994 and 16.06.1995 (ii) The first claim for rebate was made on 09.2.1994 and the second on 24.07.1995 (iii) show cause notice was issued on 28.11.1995 (iv) personal hearing attended by the petitioner on 06.09.1996 (v) order-in-original said to have been dispatched under registered post acknowledgement due on 18.09.1996 (vi) petitioner enquired as to the fate of the rebate claim on 21.06.00 (vii) the department replies informing the petitioner that the claims have been rejected by letter dated 23.06.2000 (viii) The petitioner informs the department that it has not received the order-in-original by letter dated 30.06.2000 (ix) after a gap of eight years, the petitioner files an application under the Right to Information Act on 26.03.2008 for a copy of the order-in-original (x) the order-in-original is received through RTI on 25.04.2008 (xi) an appeal was filed by the petitioner before the first appellate authority on 13.06.2008.

6. The above facts reveal a yawning gap between 30.06.2000, when the petitioner writes to the revenue stating that it has not received the order-in-original, and 26.03.2008 when an application was filed by it under RTI seeking a copy of the order-in-original. The Department could well have furnished a copy of the order-in-original pursuant to the enquiry made by the petitioner and equally so, the petitioner should have specifically sought a copy of the order from the revenue department instead of waiting till March 2008 to apply for the order under RTI.

7. On the aspect of delay, there is absolutely no explanation forthcoming from the petitioner to explain the wait between 30.06.2000 and 26.03.2008 seeking a copy of the order-in-original under RTI, even to a pointed query put in this regard to the learned counsel for the petitioner. The petitioner, when informed on 26.03.2000 that an order has been passed ought to have been diligent in pursuing the order of its claim for rebate, which has not been done. I am thus of the view that the appeal filed by the petitioner is grossly belated and the order of the Revisional Authority on this aspect is confirmed.

8. Coming to the second aspect regarding the service of the order itself, it is the contention of the revenue that the order-in-original has been sent by registered post and this would suffice as far as proper service upon the petitioner is concerned. Relevance in this regard is placed on Section 27 of the General Clauses Act, 1987 reading as follows:

Section 27:Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or ' send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by property addressing pre-paying and posting by registered post, a letter containing the documents and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

9. According to the revenue, mere dispatch of the order would suffice, to establish that service of the order upon the petitioner is complete. I do not agree, in the light of Section 37-C of the Central Excise Act, 1944 which specifically provides for the mode of service of decisions/ orders/ summons/ notices upon the assessee. Section 37-C reads as follows:

37-C. Service of decisions, orders, summons, etc.- (1) Any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served,-

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due [or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot served in the manner provided in clause (a), by affixing a copy thereof, to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [or courier referred to

in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).

10. In the light of the specific mode of service stipulated under the Central Excise Act, to the effect that service should be by Registered Post with acknowledgment due and proof of delivery upon the person upon whom it is intended or his authorised agent, either personally or by affixture, there is no necessity to refer to the provisions of the General Clauses Act. The latter is only to be referred to in a situation, where there is no specific provision available in the respective enactment in regard to the manner and mode of service of notice. Where Section 37 specifically provides for the mode of service, the provisions of Section 27 have no application. This argument of the revenue is rejected.

11. Coming to merits, the petitioner is seen to have substantively complied with the provisions for grant of rebate. Rule 12 which deals with the grant of rebate states as follows:

> 12. Rebate of duty.-
>
> (1) The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of-
>
> (a) duty paid on the excisable goods;
>
> (b) duty paid on materials used in the manufacture of goods;
>
> If such goods are exported outside India or shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft, to such extent and subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification:
>
> Provided that if the Commissioner of Central Excise or as the case may be the Maritime Commissioner of Central Excise is satisfied that the goods have in fact been exported, he may, for reasons to be recorded in writing, allow, the whole or any part of the claim for such rebate, even if all or any of the conditions laid down in any notification issued under this rule have not been complied with.

12. The proviso to Rule 12 states that if the authorities are satisfied that the goods have, in fact, been exported, then the claim for rebate may be accepted even if the conditions set out under the respective and applicable Notifications have not specifically been complied with. The proviso has been inserted

on 06.10.1994 and, in my considered view, is clarificatory, applying in relation to exports that have been occasioned even prior thereto.

13. In the present case there is no dispute on the position that the goods have been exported and in the light of the fact that the petitioner has complied with the provisions of Rule 12, this argument of the revenue is also rejected and the claim, of the petitioner upheld on merits.

14. This writ petition is disposed in the above terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Joint Secretary
to Government of India, Union of India,
(Revision Application), Ministry of
Finance, Department of Revenue,
No.14, HUDCO Vishala Building, 6th Floor,
Bhikaji Cama Place, New Delhi-110 066

2.The Commissioner of Central Excise,
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Commissionerate of Central Excise,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034

+1 cc to Mr.B.Sathish Sundar Advocate sr82199
+1 cc to Mr.T.Pramod kumar Chopda Advocate sr81819

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