IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13225 of 2019

M/s.Mobis India Limited
Plot No.G-1, SIPCOT Industrial Park,
Irungattukotai
Kancheepuram District - 602 117. ...Petitioner

.Vs.

The Deputy Commissioner of CGST and Central Excise
Poonamallee Division - Chennai Outer Commissionerate
C-48, TNHB Building
Anna Nagar, Chennai-600 040.
...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned order in Original No.6/2019(R) dated 27.02.2019 on the file of the respondent and to quash the same and consequently, directing the respondent to grant refund amounting to Rs.81,12,060/- along with appropriate interest.

For Petitioner : Mr.K.Senguttuvan

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

Mrs.Hema Muralikrishnan, learned Senior standing counsel takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order-in-original dated 27.02.2019, wherein and whereby, the refund claim made by the petitioner under Rule 18 of the Central Excise Rules 2002, was rejected.

3. Heard both sides and perused the materials placed before this Court.

4. It is seen that the impugned order was passed after issuing a show cause notice to the petitioner, considering their objections and also by providing an opportunity of personal hearing. Though the learned counsel for the petitioner sought to contend that the impugned order is not sustainable, in view of the decision made by the Division Bench of this Court in the case of the Deputy Commissioner of Central Excise Vs. M/s.Dorcas Market Makers Pvt. Ltd., 2015 (321) E.L.T. 45, the learned Senior standing counsel appearing for the respondent contended that another recent decision of the Division Bench made in the case of Hyundai Motors India Ltd., Vs. Dept. of Revenue, Ministry of Finance, 2017 (355) E.L.T. 342, is in support of the Revenue. Therefore, it is evident that only the factual aspects of the matter have to be gone into and decided, as which of the said judgments will apply to the present case. Such factual aspects have to be considered only by the next fact finding authority viz., Appellate Authority. Admittedly, as against the order impugned in this writ petition, an appeal lies before the Commissioner of CGST (Appeal-II), Chennai-40. Therefore, it is for the petitioner to work out such remedy by filing regular appeal.

5. Accordingly, without expressing any view on the merits of the contention raised by both parties, this Writ Petition is disposed of, only by granting liberty to the petitioner to file such an appeal, within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the concerned Appellate Authority shall consider and pass orders on the same on merits and in accordance with law without reference to the period of limitation. No costs.

mk

Sd/-
Assistant Registrar(CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of CGST and Central Excise
Poonamallee Division - Chennai Outer Commissionerate
C-48, TNHB Building
Anna Nagar, Chennai-600 040.

+1cc to Mr.K.Senguttuvan, Advocate, SR.No.83591
+1cc to Mrs.Hema Muralikrishnan, Advocate, SR.No.82956

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Kak(21/10/2019)