IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.10.2019

CORAM

THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.13745 of 2019

M/s. Nipman Fastener Industries Pvt.Ltd.
represented by its Director,
Mr.Ram Prakash Grover
Plot No.E-15, CMDA Industrial Complex
Maraimalai Nagar,
Kanchipuram - 603 209. ...Petitioner

Vs.

The Deputy Commissioner of Customs (Refunds)
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai - 600 001. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus and call for the records pertaining to the impugned Order-in-Original No.62429/18 dated 26.03.2018 of the 2nd respondent in F.No.S24/MAN/3429-16-REFUNDS and S25/MAN/721/18 and quash the same and further direct the respondent to sanction the refund by fixing the time frame.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.S.Rajasekar,
Junior Panel Counsel
for Mrs.R.Hemalatha,
Senior Panel Counsel

O R D E R

This Writ Petition is filed challenging the order of respondent dated 26.03.2018, wherein and whereby, the refund claim made by the petitioner for an amount of Rs.35,93,099/- was rejected as premature on the ground that the petitioner has not challenged the assessment.

2. Following are the short facts and circumstances as projected by petitioner in filing the present Writ Petition.

The petitioner is engaged in the business of manufacturing automotive fasteners. They filed bill of entry No.54726467 dated 22.06.2016 for import of goods described as "OBJ Assembly Semi-Autoline Machine 6CT of 1 set" falling under Customs Tariff Entry 84798999. The goods were being imported from the Republic of Korea. In terms of Notification No.151/2009-Cus dated 31.12.2009, goods imported from Republic of Korea was exempted from levy of Basic Customs Duty, subject to the condition that the importer proves to the satisfaction of the Authority of Customs that the goods are of the origin of Republic of Korea. The supplier of goods to the petitioner could not provide such certificate in time and therefore, the petitioner requested for provisional assessment pending production of the required certificate in original. The Customs did not agree for provisional assessment and therefore, the goods, after examination by the Customs, were cleared on collection of Customs Duties. The petitioner later received the certificate of origin dated 06.07.2016 issued by the Korea Customs Service. Accordingly, the petitioner filed claim petition for refund of Basic Customs Duty on 11.08.2016 along with the certificate of origin and other relevant documents. However, the respondent rejected the said claim petition only on the reason that it is is not maintainable, since the petitioner has not challenged the assessment.

3. Mr.Hari Radhakrishnan, learned counsel for the petitioner fairly submitted that in view of the recent decision of the Hon'ble Apex Court made in Civil Appeal Nos.293-294 of 2009 etc. dated 18.09.2019, unless the petitioner questions the assessment, the refund claim cannot be considered by the authority, as rightly observed by the respondent in the impugned order. He further submitted that since the refund claim itself was made within two months from the date of assessment on the bill of entry filed by the petitioner dated 22.06.2016, the petitioner may be given liberty to challenge the said assessment so as to get the benefit of exemption from the payment of customs duty in view of the exemption notification referred to supra.

4. Mr.Rajasekar, learned counsel appearing for the respondent submitted that the impugned order was rightly passed, since the petitioner has not questioned the self assessment and

therefore, only when the said assessment was either modified or set aside, the question of considering the petitioner's claim for refund would arise.

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

6. It is claimed by the petitioner that they have imported some goods from Republic of Korea through Bill of Entry No.54726467 dated 22.06.2016. It is further claimed by the petitioner that imports from the said country is exempted from levying basic customs duty in terms of Notification No.151/2009-Cus dated 31.12.2009. However, it is not in dispute that such benefit can be extended to the importer only when the Certificate of Origin is produced before the Customs authority of this country. In this case, it is claimed that though such Certificate was not readily available at the time of import, the petitioner received the said certificate dated 06.07.2016 from their supplier after clearing all the goods, on payment of Customs duty. Therefore, it is contended that the petitioner filed refund application within two months i.e., on 11.08.2016, from the date of clearance. However, it is an admitted fact that the assessment made based on the said Bill of Entry has not been questioned by the petitioner so far. In the recent decision, the Apex Court in ITC Limited vs. Commissioner of Central Excise, Kolkata IV has observed that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act. Therefore, this Court is of the view that the refund claim made by the petitioner was rightly rejected as premature, since the petitioner has not challenged the self assessment made through Bill of Entry No.54726467 dated 22.06.2016.

7. As the learned counsel for the petitioner fairly submitted before this Court that liberty may be given to the petitioner to challenge the said self assessment before the concerned Appellate Authority, this Writ Petition is disposed of by granting liberty to the petitioner to file such appeal against the self assessment within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed before the concerned Appellate Authority, the same shall be taken on file and decided on its own merits and in accordance with law without reference to the period of

limitation, since this Court finds that the very refund application itself was filed by the petitioner within two months from the date of self assessment order. Needless to say that depending upon the outcome of the order to be passed in the said appeal, the petitioner can work out the remedy for refund thereafter in accordance with law. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsi

To

The Deputy Commissioner of Customs (Refunds)
Chennai II Commissionerate, Custom House, 60 Rajaji Salai,
Chennai - 600 001.

+1 CC to M/s. Hari Radhakrishnan, Advocate sr 90568
+1 CC to M/s.R. Hemalatha, Advocate sr 90451.

W.P.No.13745 of 2018

KK(CO)
SP(25/11/2019)