IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.36365 to 36367 of 2016

M/s.M.M.Enterprises,
No.263, Mint Street,
Chennai-3,
Rep.by its Proprietor
Shri Manish Mardia .. Petitioner in all the cases

vs.

1.The Commissioner of Customs, Chennai-IV,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

2.The Assistant Commissioner of Customs,
(Refunds), Commissionerate of Customs – II,
Customs House, No.60, Rajaji Salai,
Chennai 600 001. .. Respondents in all the cases

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Order in Original No.50327, 50328 and 50281/2016 dated 30.09.2016, 29.09.2016 (file No.S25/MAN/4465/2016), (file No.S25/MAN/4466/2016) and (file No.S25/MAN/4443/2016) respectively quash the same and further direct the respondents to grant interest at applicable rates on the refund claim of the petitioner entity, quantified at Rs.11,24,012/- Rs.11,16,282/- and Rs.32,51,291.20/-

For Petitioner : Mr.B.Sathish Sundar, in all Cases

For Respondents : Mr.K.S.Ramasamy, CGSC.,
in all cases.

COMMON ORDER

By this common order, all the three writ petitions have been disposed. The petitioner has prayed for interest on delayed payment of Special Additional Duty refundable under Notification No. 102 of 2007-Cust dated 14.9.2007.

2. The petitioner had imported consignments of metal scrap. The petitioner sold them at a price lower than the value declared at the time of import. The petitioner claimed refund of the aforesaid duty paid in terms of the notification. Certain flaws were noted by the respondents in the refund claims and therefore the refund claims were rejected. Under these circumstances, the petitioner had filed W.P.Nos.4770, 2496 and 2497 of 2013. By an order dated 3.11.2014, liberty was given to the petitioner to file an appeal before the Appellate Commissioner.

3. The Appellate Commissioner partly allowed the appeal by partly allowing the refund claims and partly disallowing the same. The petitioner therefore preferred the appeal before the Customs, Excise And Service Tax Appellate Tribunal, Chennai.

4. By common order, the appellate Tribunal allowed the appeal of the petitioner following the decision of the larger bench of the tribunal in Chowgule & Co Private Limited Versus Commissioner of Customs 2014 (306) ELT 326. Under these circumstances, the petitioner sent representation to the respondent for interest for delayed payment of refund under Section 27 A of the Customs Act, 1962.

5. Since the petitioner did not receive any favourable order from the respondent, the petitioner preferred W.P.Nos.30592 to 30594 of 2016 before this Court. Under the circumstances, the said writ petitions were disposed by an order dated 1.9.2006. The respondent was directed to pass a speaking order. Pursuant to the said order, the impugned orders have been passed rejecting the claim of the petitioner for interest on delayed payment of the Special Additional Duty of Customs refundable under Notification No. 102 of 2007-Customs dated 14.9.2007. The operative portion of the impugned order reads as under:-

8. The claim was examined on the conditions as stipulated in the said notification read with relevant Board's Circulars issued in this regard from time to time. The grant of refund of 4% Additional Duty f customs is governed basically by the Notification No.102/2007 dated 14.09.2007 and not by the provisions of Section 27 and 27A of the customs Act 1962. Therefore, the grant of interest on the delayed refund of 4% AD does not arise.

9. I find that against the order of the said Judgment of the Hon'ble High Court of Madras in W.P.No.959 of 2013 dated 21.03.2013, the department had filed Writ Appeal No.928 of 2013 and the Hon'ble High Court in similar case while granting stay of operation of the order in W.P.No.1334 of 2013 dated 21.01.2013 pending disposal of W.A.No.1593 of 2014 in the case of Union of India vs. M/s.Radhalakshmi Metallurgical has the following order.

"Notice, Interim stay, Post with W.A.Nos.927, 928, 2430, 1317 to 1325, 1376 of 2013.

The case is still pending hence and cannot be relied.

10. Further, I find that the Hon'ble High Court of Delhi in the case of Principal Commissioner of Customs vs. Riso India Pvt Ltd., reported in 2016 (333) ELT 33(Del) has relied upon the order of the Hon'ble High Court of Madras in the case of M/s.KSJ Metal Impex(I) Pvt.Ltd. In the event of the said relied upon order itself is under stay granted by the Hon'ble Bench of the High Court of Madras, the reliance placed on the order of the Hon'ble High Court of Delhi by the claimed is not acceptable and sustainable.

11. Further, the legislative intent is to grant exemption by way of 4% Additional Duty of Customs and there is no provision in the aforesaid notification to grant interest

> or to apply the provisions of Sections 27 or 27A of the Customs Act, 1962. I find the Notification No.102/2007-Cus dated 14.09.2007 itself prescribed the manner of filing of a refund claim with inbuilt time limit, conditions and nowhere does the notification takes recourse to the provisions of Section 27 and 27A of the Customs Act, 1962. In the absence of specific provision for payment of interest being applicable under the said notification, the payment of interest does not arise for this claim.
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> 12. Therefore, it could be appreciated that the scheme is essentially an exemption but operates by way of refund of duty paid at the time of import of goods and such refunds are governed by the provisions of the Notification only as described above. The proviso under Section 27 of the Customs Act, 1962 would not apply to this case on hand.
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> 13. In view of the above and fact I hold that the claim of interest on the amount refunded is not maintainable and is liable for rejection. Accordingly, I pass the following order :-
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> ORDER
>
> I order rejection of claim of interest on the refund granted to M/s.M.M.Entrprises, 263, Mint Street Park Town, Chennai 600 003 for the reason stated supra".

6. The respondent has rejected the request of the petitioner by stating that the request of the petitioner cannot be entertained as order passed by this court in M/s. KSJ Metal Impex (I) Private Limited though referred to in RISO India Private Limited 2016 (333) ELT 33 (Del) has been stayed by a Division Bench of this court and therefore the decision of the Delhi High Court was not acceptable and sustainable.

7. The learned counsel for the petitioner submitted that merely because the decision of the learned single Judge rendered in KSJ Metals Impex(P)Ltd vs. Under Secretary (cus), M.F.(DR) reported in 2013 (304) ELT 660 (Del.) has been stayed by the Division Bench, by itself does not mean the respondent can delay payment of interest. The learned counsel submits that stay merely suspends the order and operates qua the partly concerned and the reasoning therein and the ratio therein still had persuasive value.

8. The learned counsel relied on the decision of the Delhi High Court reported in the case of Principal Commissioner of Customs v. Riso India Pvt.Ltd. 2016 (333) ELT 33 (Del.) wherein the Division Bench had taken cognizance of the stay granted by the Division Bench in KSJ Metals Impex (P) Ltd (cited supra) and has still considered the provisions of law independently in the context of same notification under question and allowed the claim for interest and held that it cannot be denied.

9. The learned counsel further brought to the notice of yet another Division Bench decision of the Delhi High Court rendered in Micromax informatics Ltd vs. Union of India, 2018 (361) ELT 968 (Del.). There also the Court considered the above decisions rendered in the above two cited cases and ordered payment of interest.

10. The learned counsel also relies on the Division Bench decision of the Bombay High Court rendered in similar circumstances reported in the case of Tahnee Heights Co-op Housing Society Ltd vs. UOI, 2016(339) ELT 356 (Bom).

11. Per contra, the learned counsel appearing for the revenue submitted that the impugned order is well reasoned and requires no interference and submitted that the petitioner has already filed an appeal before the Commissioner of Customs (Appeals) and therefore the writ petition is liable to be dismissed.

12. The learned counsel also filed a copy of the stay obtained in C.M.A.No.1342 of 2017 in the case of Commissioner of Central Excise, Coimbatore v. M/s.Sun Combine, Coimbatore and another dated 17.06.2017 wherein the order of the Tribunal granting relief for interest under Section 27A of the Customs

Act, was stayed. The learned counsel further reiterated paragraph 21 of the counter affidavit.

13. I have considered the arguments advanced on behalf of the petitioner and the respondents.

14. The reasoning in the impugned order is contrary to the scheme of the Customs Act, 1962. The exemption notification issued under Section 25A merely relaxes the condition from levy of tax. Refund of Duty is stipulated therein subject to the conditions. Procedure for refund of Duty is governed by Section in 27 and the payment of interest on delayed payment thereon under Section 27A of the Customs Act. The notification cannot be read in isolation of the Customs Act, 1962.

15. If there is delay in payment of any refund claim, the 2nd respondent is duty bound to pay the interest in terms of Section 27A of the Customs Act. At the same time, since the decision of this Court rendered in KSJ Metals Impex (P) Ltd (cited supra) has been stayed I am unable to give any relief to the petitioner at this stage. However, there is no difficulty in setting aside the impugned order and remitting the case back to the 2nd respondent to await for the decision of this Court in KSJ Metals Impex (P) Ltd (cited supra) before passing fresh order.

16. The respondent shall pass appropriate orders as and when the division Bench dispose KSJ Metals Impex (P) Ltd case, unless there is an earlier decision of the Hon'ble Supreme Court on the very same subject.

17. In the light of the above observation, the impugned orders are hereby set aside. The 2nd respondent is directed to pass afresh order keeping the above observation in mind. Needless to state that the petitioner shall be heard before fresh orders as passed in the remand proceeding.

18. All the three writ petitions stand disposed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

tsh/kkd

To

1.The Commissioner of Customs, Chennai-IV,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

2.The Assistant Commissioner of Customs,
(Refunds), Commissionerate of Customs – II,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

+3 ccs to Mr.B.SathishSundar Advocate sr 105172

+1 cc to Mr.K.S.Ramasamy Advocate sr105164

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aa23/01/2020