IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.Nos.3444 and 3445 of 2019

1.Union of India,
rep. by its Secretary,
Ministry of Foreign Trade,
New Delhi.

2.The Director General of Foreign Trade,
Ministry of Commerce & Industry,
Government of India,
Udyog Bhawan, New Delhi.

3.The Development Commissioner,
MPEZ Special Economic Zone & HEOUS,
Administrative Building,
National Highway-45,
Tambaram, Chennai-600 045. .. Appellants in both appeals

-vs-

1.Same Deutz-FahrIndia (P) Ltd.,
rep. by its Authorised Signatory S.Thamilselvan,
No.72/72M, Spicot Industrial Complex,
New Delhi.

2.Commissioner of Central Excise,
(Now redesigned as Commissioner of Goods and Service Tax)
Chennai Outer - Commissionerate,
Office of the Commissioner of GST,
Anna Nagar, Chennai-600 040. .. Respondents in both appeals

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 14.12.2017 passed in W.P.Nos.32598 and 32597 of 2017 on the file of this Court.

Prayer in W.P.3258 of 2017 and 3257 of 2017:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned refund rejection Letter in F.No.26/764/12-13/A.V/724 and F.N.No.26/764/12-13/A-V/799 dated 21.6.2013 and 09/07/2013 respectively issued by the 3rd respondent quash the same and direct the 3rd respondent to sanction refund of Terminal Excise Duty to the petitioner.

For Appellants : Mr.V.Ashok Kumar
Central Government
Standing Counsel
(in both Appeals)

For Respondent I: M/s.J.Prasanna Kumar

COMMON JUDGMENT

(Delivered by The Hon'ble Acting Chief Justice)

The appellants - Union of India; Director General of Foreign Trade and the Development Commissioner, MPEZ Special Economic Zone and HEOUS, Chennai, have filed these appeals against the common order dated 14.12.2017 passed by the learned Single Judge of this Court in W.P.Nos.32597 and 32598 of 2017 filed by the first respondent assessee, M/s.Same Deutz-FahrIndia (P) Limited, wherein the learned Single Judge has directed the present appellants to process the refund claim in accordance with 2009 Policy by taking into consideration the assessee's refund application and pass appropriate orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of the said order.

2. The learned Central Government Standing Counsel for the appellant, Mr.V.Ashok Kumar, drew our attention to the Circular dated 15.3.2013 issued by the Ministry of Commerce and Industry, Directorate General of Foreign Trade, Udyog Bhawan, New Delhi, wherein the Joint Director of Foreign Trade had directed that the agency collecting the tax would refund the same in cases where such duty is paid even though there was an exemption on the deemed exports in question. Paragraph (3) of the said Circular dated 15.3.2013 is quoted below for ready reference:

"3. Prudent financial management and adherence to

> discipline of budget would be compromised if refund is provided, in cases, where exemption is mandated. In fact, in such cases the relevant taxes should not have been collected to begin with. And if, there has been an error/oversight committed, then the agency collecting the tax would refund it, rather than seeking reimbursement from another agency. Accordingly, it is clarified that in respect of supplies, as stated at Para 2 above, no refund of TED should be provided by Ras of DGFT/Office of Development Commissioners, because such supplies are ab-initio exempted from payment of excise duty."

3. The learned Standing Counsel for the appellants submitted that since the amount in question stood deposited with the Central Excise Department, the present appellants, including the Development Commissioner of MEPZ Special Economic Zone, could not have been directed by the learned Single Judge to process the refund claim of the first respondent assessee and, hence, the present appeals.

4. Having heard the learned counsel for the appellants, we are of the opinion that there is no error in the impugned order passed by the learned Single Judge, who has only directed the appellants to process the refund claim of the first respondent assessee and pass appropriate orders on merits and in accordance with law, within three months thereof. If the appellant Development Commissioner of MEPZ Special Economic Zone was of the opinion that the said appellant was not holding the money in question as deposited by the first respondent assessee despite exemption on the deemed exports in question, he could have passed such an order relegating the assessee to the Central Excise Department, where the amount is lying deposited. Unless the appellants can deny the claim of the first respondent assessee on justifiable grounds, there was no occasion for the appellants, the Departments of the Central Government, to approach this Court by way of the present intra-court appeals. There is no dispute before us that the first respondent assessee was entitled to such refund and the only question is as to which authority or Department of the Union of India should process the refund claim and make refund to the first respondent assessee.

5. We do not appreciate filing of such frivolous appeals before the Division Bench of this Court by the appellants. Since the learned Single Judge has only given direction to the appellants to process the refund claim in accordance with law and pass appropriate orders on merits, the appellants could have passed such orders within three months after giving opportunity of hearing to the first respondent assessee, so that the

appropriate Department could be approached by the first respondent assessee for claiming the refund in question.

With the above observations, these appeals are dismissed. No costs. Consequently, C.M.P.Nos. 22085 and 22090 of 2019 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1.The Commissioner of Central Excise,
(Now redesigned as Commissioner of Goods and Service Tax)
Chennai Outer - Commissionerate,
Office of the Commissioner of GST,
Anna Nagar, Chennai-600 040.

2.The Secretary,
Ministry of Foreigh Trade,
New Delhi.

3.The Director General of Foreign Trade,
Ministry of Commerce and Industry,
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W.A.Nos.3444 and 3445 of 2019

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srg 15/11/2019