IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2894 & 2895 of 2017

and

W.M.P.Nos.2808 & 2809 of 2017

M/s. Aditya International Ltd.,
Represented by its Director
Mr.Ramsingh Agarwal,
Suite No.226,
Bussa Industrial Premises Co-op. Sco. Ltd.,
Century Bazar Lane, Prabhadevi,
Mumbai - 400 025. ... Petitioner in both W.Ps.

vs

1.The Commissioner of Customs (Appeals-II),
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

2.The Assistant Commissioner of Customs
(Refunds-Seaport)
Custom House, No.60,
Rajaji Salai, Chennai - 600 001. ... Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari by calling for the records of the second respondent culminating in the issue of Confirmed Demand Notices No.1/2017 & 2/2017 dated 05.01.2017 from File Nos.S24/SAD/64/2015-Refunds & S24/SAD/350/2015-Refunds and quash and same.

For Petitioner : Mr.S.Murugappan in both W.Ps.

For Respondents : Mr.A.P.Srinivas in both W.Ps.

COMMON ORDER

By this common order, both Writ Petitions have been disposed.

2.The present Writ Petitions have challenged the demand confirmed by the 2nd respondent the Assistant Commissioner of Customs (Refunds-Seaport) pursuant to the order of remand passed by the Commissioner of Customs (Appeal-II) in appeal C.Cus.II.No.783 to 786 of 2016.

3.Earlier, the writ petitioner had filed refund claims in terms of notification No.102 of 2007-customs of the Special Additional Duty paid on the imported goods as the goods were exempted under the UP VAT Act, 2008.

4.The learned counsel for the revenue submits that the refund of Special Additional Duty for some of the other importers have already been considered by the Customs, Central Excise and Service Tax Appellate Tribunal and the department also accepted the same. This fact was also brought to the notice of a learned Single Judge in a batch of case of writ petitions in which came to be disposed on 23.09.2019 in M/s.Goyal Impex and Industries Limited vs M/s.DO Best Infoway Space E. The operative portion of the order is reproduced below:-

> The petitioners in this batch of writ petitions challenge notices/order-original/appellate orders proposing to reject/rejecting the request for refund of special additional duty.
>
> 2. Mr.A.P.Srinivas, learned Central Government Standing Counsel for the respondents fairly points out that the issue of refund of special additional duty was considered by the Customs, Central Excise and Service Tax Appellate Tribunal vide order dated 02.06.2017 and the issues decided in favour of the importer. This order has been accepted by the Department.
>
> 3. These Writ Petitions are thus liable to be allowed and I do so. The petitioners may seek refund of the special additional duty paid by way of an applications to be filed within a period of two (2) weeks from today. Upon receipt thereof, necessary orders for refund shall be passed by the respondent. Connected Miscellaneous Petitions are closed. No costs.

5.Since this issue is covered by the above decision of the learned Single Judge, I am inclined to allow relief to the writ petitioner. The respondents are directed to pass an appropriate order for refunding the Special Additional Duty paid by the writ petitioner.

6.In view of the above, the present Writ Petitions are allowed with the above observations. No cost. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1.The Commissioner of Customs (Appeals-II),
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

2.The Assistant Commissioner of Customs
(Refunds-Seaport), Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.S.Murugappan , Advocate SR.No. 101203
+1cc to Mr.A.P.Srinivas , Advocate SR.No. 101728

W.P.Nos.2894 & 2895 of 2017
and W.M.P.Nos.2808 & 2809 of 2017

A.SK(31/01/2020)