IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.23225 of 2017(O&M)

Date of Decision:-05 .11.2019

M/s KVTEK Power Systems Pvt. Ltd & Anr.

......Petitioners.

Versus

Union of India & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present: Mr. AkshayBhan, Senior Advocate assisted by
Mr. Sushant Kareer, Advocate for the Petitioners.

Mr. Madan Sandhu, Advocate for
Mr. R.K. Handa, Advocate for respondent Nos.1 & 2.

Mr. Sourabh Goel, Advocate for respondent No.3.

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JASWANT SINGH, J.

1. Through instant petition under Article 226 of the Constitution of India, the Petitioner-Private Limited Company is seeking direction to Respondents to refund a sum of Rs.1 Crore which was deposited during the course of investigation conducted by Directorate of Revenue Intelligence (for short 'DRI')-Respondent No. 2.

2. The Petitioner has been importing "Online Transformer Dissolved Gas Analysis Monitors" which are supplied to manufacturers of transformers across the country. The Petitioner declared classification of goods under Chapter heading 9027.20 of first schedule to Customs Tariff Act, 1975. The goods were cleared under category of 'Nil' rate of duty.

3. The DRI initiated an investigation against the Petitioner alleging mis-declaration of classification of the goods. As per DRI imported goods are classifiable under Chapter heading 9027.10 and not 9027.20 which was declared by the Petitioner. The DRI time to time issued summons to Petitioner who appeared before Competent Officer. The Petitioner on 27.04.2017 submitted with DRI a demand draft of Rs.30 Lakh and thereafter drafts of Rs.20 Lakh, 20 Lakh & 30 Lakh on 12.09.2017, 21.09.2017 & 27.09.2017 respectively were submitted. Only grievance of Petitioner is that in view of different judgments of this Court, DRI has no authority to recover any amount during the course of investigation.

4. Learned Counsel for the Petitioner referred to Division Bench judgments of this Court in **Concept Global Impex Vs UOI 2019 (365) ELT 32 (P&H), Century Metal Recycling Pvt. Ltd. v. Union of India - 2009 (234) E.L.T. 234 (P & H) and Century Knitters (India) Ltd. v. Union of India - 2013 (293) E.L.T. 504** where refund of the amount recovered in this fashion was ordered. Delhi High Court's judgment in ***Digipro Import and Export Pvt. Ltd.*** v. ***Union of India and others* - 2017-TIOL-1076-HC-DEL-CX = 2017 (353) E.L.T. 3 (Del.)** was also referred to wherein the matter was referred to CVC to enquire into the matter regarding harassment to the importers by the officials of the DRI.

5. Learned Counsel for the Petitioner further submitted that they are required to make deposit of 7.5% of duty demanded for filing appeal before Tribunal. Hence, recovery of money under coercion at this stage is without authority of law and the amount needs to be refunded.

6. On the other hand, Counsel for the respondents submitted that the amount was paid by the petitioner voluntarily, finding that he had violated the law while importing the goods. The Adjudicating Authority during the pendency of present petition has passed Order-in-Original dated 27.08.2019 whereby demand of Rs.3,32,46,063/- stands confirmed. The amount deposited during investigation has already been appropriated against demand confirmed, thus there is no occasion to refund amount deposited during investigation. An affidavit dated 19.09.2019 of Sh. D.S. Mann, Assistant Director DRI, Mumbai was filed in Court explaining the circumstances under which the aforesaid voluntarily deposited amount was appropriated.

7. Having heard arguments of counsel for the parties and scrutinized record of the case, we find that dispute in the present case lies in narrow compass. The only grouse of the Petitioner is that DRI had recovered a sum of Rs.1 Crore during investigation without show cause notice as well confirmed demand which is contrary to pronouncement of law by various courts including this court, thus they are entitled to refund of said amount.

8. The fact that a sum of Rs.1,00,00,000/- had been taken from the petitioner without there being any show cause notice or the demand at that time, is not in dispute. The only issue sought to be raised by Counsel for the respondents is that the amount was deposited by the petitioner voluntarily. The issue has already been gone into by this Court in ***Century Metal Recycling Pvt. Ltd***. and ***Century Knitters (India) Ltd.*** **cases (supra**) wherein finding that certain amount was recovered from the exporter without any show cause notice or demand, it was ordered to be refunded.

9. In ***Century Metal Recycling Pvt. Ltd. (supra***) it was held hat unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. It was in relevant para 13 observed as under:-

> "13. As far as the amount deposited by the petitioners is concerned, case of the petitioners is that the same was deposited under coercion. Case of the respondents was that the same was deposited voluntarily. Whatever be the position, unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. No justification has been shown for retaining the amount deposited, except saying that since it was voluntarily deposited. In view of this admitted position, the petitioners are entitled to be returned the amount paid. "

10. In ***Century Knitters (India) Ltd. (supra)*** finding that certain amount was recovered by the revenue without any show cause notice or demand, while directing retaining of 20% of the amount, the balance amount of Rs.8 Crores was directed to be refunded. It was held that unless a demand is finalized and is existing which is liable to be discharged, the revenue cannot retain any amount unless there is a specific provision in the statute which authorizes such retention. Retention of any amount by the revenue in such a situation would be violative of Article 265 of the Constitution.

11. This Court in ***Concept Global Impex (Supra***) relying upon judgment of this Court in the case of ***Century Knitters (Supra)*** directed Respondent to refund amount recovered during investigation after deducting a sum of Rs.6 Lakh which was necessary to file appeal upto Tribunal.

12. Keeping in view the enunciation of law as noticed above, we find that present petition deserves to be partly allowed by permitting retaining 7.5% of the demand of differential duty towards filing of the appeal, and accordingly same is **partly allowed**. The Respondent is hereby directed that after retaining an amount of Rs.25 Lakh (7.5% of duty confirmed) shall refund to Petitioner a sum of Rs.75 lakh out of Rs.1 Crore. Needful shall be done within a period of four weeks from the date of receipt of copy of the order.

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

November 05, 2019
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***