IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-11.12.2019

CWP No.7392 of 2017(O&M)

M/s HLG Trading through its Proprietor.

......Petitioner.

Versus

Union of India & Anr.

......Respondent.

2.

CWP No.7699 of 2017(O&M)

M/s HLG Trading through its Proprietor.

......Petitioner.

Versus

Union of India & Anr.

......Respondent.

3.

CWP No.7710 of 2017(O&M)

M/s HLG Trading through its Proprietor.

......Petitioner.

Versus

Union of India & Anr.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Jagmohan Bansal, Advocate for the Petitioner.

Mr. Amit Goyal, Advocate for the Respondents.

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JASWANT SINGH, J.

1. By this common order CWP No. 7392, 7699, 7710 of 2017 involving identical question are disposed of. The Petitioner-Proprietorship concern through instant petition under Article 226 of the Constitution of India is seeking quashing of order dated 28.02.2017 **(Annexure P-23),** 28.02.2017 **(Annexure P-10)** 28.02.2017 **(Annexure P-19)** in CWP No. 7392 of 2017, 7699 of 2017, 7710 of 2017 respectively.

2. Few facts necessary for the adjudication and emerging from record are that the Petitioner-Proprietorship concern during 2013-14 and 14-15 vide 36 (22+14+2) bills entry filed at ICD, Ludhiana imported yarn/fabrics. The Petitioner under EDI system filed bills of entry. The Petitioner had no choice but to pay duties as uploaded in the system, resultantly the Petitioner had to pay CVD inspite of the fact that in view of notification No. 30/2004 dated 9.7.2004 (**Annexure P-1**), it was not payable. At the time of clearance of goods, Respondent framed provisional assessment. The Petitioner approached this court seeking direction to Respondent to frame final assessment and this court vide order dated 15.12.2016 in CWP No. 12990 of 2016 directed the Respondent to frame final assessment on the issues raised in pending bills of entry. The Petitioner during the course of assessment claimed refund of CVD which was paid at the time of clearance of goods under provisional assessment. The Respondent passed final assessment order vide impugned orders whereby refund claim of Petitioner qua CVD was declined. In two orders, classification and value was not disputed but refund claim of CVD was turned down, however in case of order dated 28.02.2017 relating to 14 Bills of Entry valuation was also disputed.

3. Mr. Bansal, counsel for the Petitioner contended that the Respondent has accepted that CVD was not payable, still refund has been rejected holding that duty was voluntarily paid and case of Petitioner is covered under unjust enrichment. Hon'ble Supreme Court in the case of **SRF Ltd. Vs. Commissioner 2015 (318) ELT 607 SC** has clearly held that CVD is not payable if goods manufactured in India are exempt from duty and condition of non-availment of Cenvat Credit is not applicable. The Petitioner had to pay duty due to EDI system which was not permitting clearance without CVD. The Respondent has no authority to withhold any amount in the name of duty which was not leviable. The assessment at the time of clearance of goods was provisional so it was provisional for all purposes and Respondent was bound to consider claim of the Petitioner. Mr. Bansal supported his contention with the judgment of Hon'ble Delhi High Court in the case of **Telecare Network (India) Pvt. Ltd. Vs. Union of India 2019 (368) ELT 36 (Del.)** which while dealing with question of refund of CVD paid at the time of import of goods has held that in view of judgment of Hon'ble Supreme Court of SRF Ltd. (Supra), limitation and bar of Section 27 of Customs Act is not applicable.

4. Mr. Amit Goyal, counsel for the Respondent contended that impugned orders are appealable, thus writs are not maintainable. He further pointed out that duty was paid voluntarily and thereafter recovered from customers at the time of further sale, thus Petitioners are not entitled to refund of CVD paid at the time of provisional assessment.

5. Conceded position emerging from record is that CVD was not payable during the period in question and Petitioner had to pay on account of EDI system where Petitioner had no choice except to pay duty as loaded in the EDI system. The Petitioner claimed refund of duty during the course of framing final assessment which was framed on the directions of this court.

6. Having heard arguments of both counsel and scrutinized record of the case, we find that Delhi High Court in the case of **Telecare Network (India) Pvt. Ltd. Vs. Union of India <u>2019 (368) ELT 36 (Del.)</u>** as cited by counsel for Petitioner has dealt with question of refund of CVD paid at the time of import and objection of alternative remedy. Relevant Para 12 is reproduced as under:

> **12.** There is no dispute about the applicability of *SRF Ltd.* (supra); indeed the Revenue's refrain during the hearing was that the amounts *could not be refunded* because the claims were time-barred and that the petitioner has an alternative remedy. This Court is of opinion that the plea of alternative remedy an unoriginal and frequently used stereotypical defence by public bodies - in such cases at least dodges the crux of any dispute, i.e. the liability of the concerned public body or agency *on merits. Sans* any dispute with respect to facts, this Court finds it entirely unpersuasive, since Article 144 of the Constitution, compels all authorities to give effect to the law declared by the Supreme Court (as in this case, the *SRF Limited* judgment). The other plea which the Customs had relied on, to defeat the petitioner's refund application was Section 27(3) which confines refunds to the situations contemplated in Section 27(2), notwithstanding any judgment, order or decree of the Court. This Court is at a loss to observe the relevance of that reasoning, given that *SRF Limited* (supra) had ruled *in principle* that import implied a deemed manufacture, without any corresponding obligation on the part of the importer to have availed Cenvat credit. As such, the amount claimed was not duty and could not have been recovered by the Customs authorities in the first instance, given the declaration of law in *SRF Limited* (supra). Therefore, they cannot now seek shelter under Section 27(3) to resist a legitimate refund claim.

7. We find ourselves in full agreement with view of Delhi High Court and do not find any reason to form any contrary opinion. The Petitioner was not liable to pay CVD at the time of import and it was charged without authority of law and department is bound to refund the same. The department has contested question of levy of CVD in case of import of goods which are exempt from excise duty when manufactured in India. Hon'ble Supreme Court in the case of SRF Ltd. (supra) finally settled the issue and put the litigation to rest. The Respondent-department did not load exemption in EDI system and cannot take advantage of its un-amended EDI system. It is settled law that nobody can be permitted to take advantage of his wrong doings. The present petitions deserve to be allowed in terms of orders of Delhi High Court in the case of **Telecare Network (Supra**). Matter deserves to be remanded to Respondent to quantify amount of refund and pass fresh order.

8. In view of our above findings, impugned orders are set aside and matter is remitted back to adjudicating authority to pass orders afresh. The Respondent shall finally decide any other issue as may be involved. The Petitioner at the first instance is directed to appear before Respondent on **12.03.2020** and thereafter as and when directed by Respondent who thereafter shall pass final order within 2 months.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 11, 2019
Vinay

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