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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3763/2018 & CM No. 9179/2019

RIVER ENGINEERING PVT LTD ..... Petitioner

Through: Mr S. Sunil, Advocate.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Ashim Sood, CGSC with Ms Payal Chandra, Advocates for respondents.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **26.02.2019**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 01.02.2017 passed by the Policy Relaxation Committee (PRC), rejecting the petitioner's request for grant of Terminal Excise Duty (TED) for the goods cleared during the period commencing 01.10.2011 to 31.03.2012.

2. The petitioner is engaged in the manufacture of various items used in Projectors. The petitioner claims that one of its principal customers is a 100% Export Oriented Unit (EOU) – M/s Barco Electronic Systems India Ltd. It is claimed that the petitioner has been regularly suppling engineering items to the said EOU. The said goods have been cleared by availing of Cenvat Credit. The petitioner, thereafter, sought refund of the excise duty in terms of the Notification No.22/2003 – dated 31.03.2003. The controversy in the present petition relates to the petitioner's entitlement to claim refund of TED from the Directorate General of Foreign Trade (DGFT) in terms of Paragraph 8.3(c) of the Foreign Trade

Policy, 2009-2014.

3. By an application dated 12.06.2012, the petitioner had sought refund of an amount of ₹49,80,472/- as TED for the period commencing from 01.10.2011 to 31.03.2012. Concededly, the petitioner also submitted all relevant documents relating to supplies made to the said EOU. The petitioner's request was rejected by a communication dated 17.12.2012, whereby the petitioner was informed that pursuant to the decision of the Committee dated 04.12.2012, TED on goods supplied to 100% EOU were non-refundable by the DGFT as the said goods were not exempt from the payment of duty, at the time of clearance.

4. On 15.03.2013, the DGFT issued a Circular clarifying that TED refund was not granted in cases where the goods were exempt from payment of duty at the time of clearance.

5. Thereafter, by a notification dated 18.04.2013, Paragraph 8.3(c) of the Foreign Trade Policy, 2009-2014 was amended to read as under:-

> "8.3 (c) Refund of terminal excise duty will be given if exemption is not available. Exemption from TED is available to the following categories of supplies:
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> (i) Supplies against ICB;
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> (ii) Supplies of intermediate goods, against invalidation letter, made by an Advance Authorisation holder to another Advance Authorisation holder; and
>
> (iii) Supplies of goods by DTA unit to EOU/EHTP/STP/BTP unit.
>
> Thus such categories of supply which are exempt ab initio will not be eligible to

receive refund of TED."

6. On 10.05.2014, the petitioner once again requested the Director, DGFT, to consider its claim for refund of TED as the goods in question were cleared prior to issuance of Notification dated 18.04.2013.

7. It is not disputed that the issues involved in the present case are covered by the decision of the Division Bench of this Court in ***Kandoi Metal Powders Mfg. Co. Pvt. Ltd. v. Union of India and Others: 2014 (302) ELT 209***. The said decision was also been followed by this Court in ***Deepak Enterprises v. Union of India & Ors.: W.P.(C) 5935/2017*** decided on 19.01.2018 and ***Motherson Sumi Electric Wires v. Union of India and Ors.: W.P.(C) 6151/2016*** decided on 12.07.2018. It is pointed out that the respondents have also filed an appeal against the decision of this court in ***Deepak Enterprises*** (*supra*) before the Division Bench of this Court (captioned ***Union of India v. M/s Deepak Enterprises: LPA No.616/2018***) and the said appeal is pending for consideration.

8. Since, there is no dispute that the controversy is covered by the earlier decisions of the Division Bench of this Court as well as by this Court, the present petition is allowed and the respondents are directed to process the petitioner's claim for refund of TED duty in respect of the goods cleared during the period 01.10.2011 to 31.03.2012.

9. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 26, 2019/MK