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

Date of decision: 26th November, 2019

+ W.P.(C) 6899/2018

HONDA TRADING CORPORATION
INDIA PVT. LTD.

..... Petitioner

Through: Mr. Karan Sachdev and Ms.
Avisha Khatri, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Anil Soni, CGSC with
Mr. Devesh Dubey, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

26.11.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

CM No. 26145/2018 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 6899/2018

1. This writ petition has been preferred challenging the order passed by the Revisional Authority dated 3rd January, 2018 (Annexure P-1 to the memo of this writ petition), who upheld the denial of rebate on the ground that the description of goods in ARE-1 and excise invoices do not

tally with the description in the shipping bills and commercial invoices as well as purchase orders placed by foreign buyers.

2. The Order-in-Original dated 2nd April, 2013 (Annexure P-3) and the Order-in-Appeal dated 8th May, 2014 (Annexure P-2) also rejected the claims on the ground that the description of goods on the shipping bills and commercial invoices did not tally with the description in the ARE-1 forms and the excise invoices.

3. The Revisional Authority had found that:

(i) The gross/net weight was also different in some ARE-1 forms vis-à-vis the packaging lists.

(ii). The part numbers on the ARE-1 forms were also different.

(iii) The petitioner submitted that the petitioner provided the “commercial description”, while the manufacturer provided the “engineering description”. The petitioner put forth no automatic source to show that the goods were same, though the petitioner placed reliance on the Chartered Engineers Certificate as well as the declaration by the manufacturer, this was insufficient to allow the rebate claim, and the certificate was issued only after such a difference in description was pointed out only by the office of the Deputy Commissioner.

(iv). Moreover, such certificate was without examining the said goods and only a comparison of ‘similar parts’, and since the foremost condition of grant of rebate is the co-relation between the goods cleared from factory and the goods exported, the rebate claim was denied.

4. The petitioner contends, before us, that they are entitled to rebate as the goods had already been exported and the identity was verified by the customs authorities.

5. We note that there is a consistent finding on facts passed by all the aforesaid three authorities. The crucial aspect of the rebate claim ought to have been tallied before the rebate is given and since the description of goods mentioned in ARE-1 and excise invoices do not tally with the description of the shipping bills and the commercial invoices as well as with the purchase orders placed by the foreign buyers, it is found that no error has been committed by the lower authorities in passing the Order-in-Original, and the order in Appeal and in further rejecting the revision petition, *vide* the impugned order, dated 3rd January, 2018. Whenever the assessee claims rebate, the primary and foremost consideration is the identity of goods and the onus to prove the same lies on the claimant, who, in this case has failed to do so, even as observed by the Revisional Authority. Moreover, the findings of fact warrant no interference.

6. Hence, there is no substance in this writ petition and thus, the same is hereby, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

NOVEMBER 26, 2019

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