IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 10469 of 2016
and
M.P. No. 9202 of 2016

M/s. IDS Denmed Private Limited
A-20, Mayapuri Industrial Area-I
New Delhi - 110 064
represented by its Signatory
Shri Pravin Malhotra ... Petitioner

-vs-

1.The Commissioner of Customs
Chennai, VIII Commissionerate
Customs House, No. 60, Rajaji Salai
Chennai - 600 001.

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

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent and connected with Order-in-Original No.40453/2015 dated 06.08.2015, quash the same and direct the respondents herein to disburse the refund amount of Rs.3,11,952/- with interest at appropriate rates.

For Petitioner :Mr. B.Satish Sundar

For Respondents:Mr. A.P.Srinivas
Senior Standing Counsel (For R1 and R2)



O R D E R
(through video conference)

Heard Mr. B.Satish Sundar, Learned Counsel for the Petitioner and Mr. A.P.Srinivas, Learned Senior Standing Counsel appearing for the First and Second Respondents and perused the materials placed on record and apart from the pleadings of the parties.

2. The Writ Petition challenges the Order-in-Original No.40453/2015 dated 31.07.2015 under the Customs Refund Application (Form) Regulations, 1995 passed by the Second Respondent rejecting the claim made by the Petitioner for refund.

3. It is brought to the notice of this Court by the Learned Counsel for the Petitioner that the impugned order rejecting the claim for refund has been passed without going into the merits by stating that on scrutiny of the documents, it had been noticed that there is mismatch of description of imported goods between the Bill of Entry and the corresponding sales invoice copies submitted and that certain other mandatory requirements such as CA certificate, co-relation sheet have not been produced. In this context, he refers to Rule 2(3) of the Customs Refund Application (Form) Regulations, 1995, which reads as follows:-

> "2. Form and manner of filing application for refund:-
>
> ....
>
> (3) Where on scrutiny, however, the application is found to be incomplete, the Proper Officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may resubmit the application after making good the deficiencies for scrutiny."

It is highlighted that despite the requirement in the aforesaid Regulations that when the application is found to be incomplete during scrutiny, the only course available to the concerned authority was to point out the deficiencies and return the application to the Petitioner so that the application could be re-submitted after making good the deficiencies for scrutiny, such exercise has not been carried out in the instant case.

4. There is substantial force in the aforesaid contention raised by the Learned Counsel for the Petitioner which deserves acceptance. It is apparent on the face of the record that the procedure prescribed in Regulation 2(3) of the Customs Refund Application (Form) Regulations, 1995, has not been followed by the Second Respondent who has straightaway proceeded to reject the application of the Petitioner. In such circumstances, the impugned order, which cannot be sustained, is set aside and the matter is remitted to the Second Respondent for fresh consideration.

5. It is incumbent upon the Second Respondent to inform the Petitioner regarding any deficiencies found during

scrutiny in the application for refund and return the same requiring it to be re-submitted after making good the deficiencies, for scrutiny. In the event that the Second Respondent is still not satisfied that the Petitioner has not rectified the deficiencies, an opportunity of personal hearing shall be provided to the Petitioner to explain his position in that regard. The Second Respondent shall thereafter pass reasoned orders dealing with each of the contentions raised by the Petitioner on merits, in accordance with law and communicate the decision taken under written acknowledgment to the Petitioner within a period of 60 days from which the application is re-submitted to the Second Respondent.

Accordingly, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

msm

To

1.The Commissioner of Customs
Chennai, VIII Commissionerate
Customs House, No. 60, Rajaji Salai
Chennai - 600 001.

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

+1cc to M/s.B.Sathish Sundar, Advocate SR.33793

W.P. No. 10469 of 2016

BP(CO)
CB(02/12/2020)