

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 26982 of 2011
and
M.P. No. 1 of 2011

M/s. Ashok Leyland Ltd.,
No. 1, Saradar Patel Road,
Guindy,
Chennai - 600 032.

(Represented by K.K.Sekar, DGM,
Corporate Taxation (Indirect Taxes)

... Petitioner

-vs-

1. The Joint Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Revision Application Unit,
Bhikaji Cama Place,
New Delhi - 110 066.
2. The Commissioner of Central Excise (Appeals),
Uttamar Gandhi Salai,
Chennai - 600 034.
3. The Joint Commissioner of Central Excise,
Chennai I Commissionerate,
Chennai - 600 034.
4. The Commissioner of Central Excise,
Chennai III Commissionerate,
Chennai - 600 034.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the impugned proceedings of the First Respondent passed in Order No. 243/2011CX dated 16.03.2011 and quash the same and direct the First Respondent to hold that Petitioners are entitled for drawback of 7% (on the cost of body portion of the fully built passenger buses exported by them) with reference to the 55 Brand Rate letters withdrawn by the Third Respondent in his order dated 10.05.2007 and direct the

Third Respondent to take on file the 46 Nos. of Brand Rate applications in all (referred to in the three show cause notices dated 04.01.2007, 01.02.2007 and 08.03.2007 issued by the Third Respondent) rejected and returned in his order dated 10.05.2007 and pass orders fixing drawback @ 7% (on the cost of body portion of the fully built passenger buses exported by the Petitioner).

For Petitioner : Mr. P.R.Renganath
For Respondents: Mr. V.Sundareswaran
Standing Counsel

O R D E R
(through video conference)

Heard Mr. P.R.Renganath, Learned Counsel for the Petitioner and Mr. V.Sundareswaran, Learned Standing Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order No. 243/2011-CX dated 16.03.2011 passed by the First Respondent rejecting the revision application filed by the Petitioner under Section 35-EE of the Central Excise Act, 1944 (hereinafter referred to as the 'Act' for short) preferred against the Order-In-Appeal No. 7/2009 (M-I) dated 13.04.2009 passed by the Commissioner (Appeals) Central Excise, Chennai.

3. Learned Counsel for the Petitioner has brought to notice of this Court that the impugned order has been passed by the Joint Secretary (Revision Application), Government of India, who was also in the same rank of Commissioner (Appeals) Central Excise, who had passed the Order-In-Appeal which had been challenged before him in that revision application, which is impermissible in law. He has also placed reliance on the decision of this Court in S.Moinuddin -vs- Joint Secretary, Government of India, Ministry of Finance, New Delhi (Order dated 24.01.2017 in W.P. No. 16682 of 2016), where this Court has interfered with the order that had been impugned therein in respect of similarly placed persons on that sole ground and had directed the matter to be heard by an authority after taking corrective measures in that regard. Learned Standing Counsel appearing for the Respondents, on instructions, states that subsequently, the Revisional Authority has been re-constituted, taking note of the anomaly pointed out by this Court.

4. Having regard to the aforesaid submissions made, the impugned order is quashed and the matter is remitted to the

present Revisional Authority under Section 35-EE of the Act for fresh consideration of the matter. It shall be incumbent upon the Revisional Authority, after affording full opportunity of hearing to the Petitioner, to deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law, uninhibited and uninfluenced by the impugned order, which has been set aside and communicate the decision taken to the Petitioner by 31.03.2021 under written acknowledgment.

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

Sd/-
Assistant Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

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Chennai - 600 034.

+1 cc to Mr.R.Raghavan Advocate sr35345

+1 cc to Mr.V.Sundareswaran Advocate sr35346

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aa03/12/2020