

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21924 of 2013
and M.P.No.1 of 2013

M/s. Super Spinning Mills Limited,
C-Unit, D.Gudalur,
Dindigul District - 624 620. Petitioner

vs

1. The Joint Secretary Revision Application,
No.14, HUDCO Vishala Building, B wing,
8th Floor, Bhikaji Cama Place,
New Delhi - 110 066.
2. The Assistant Commissioner of Central Excise,
Central Excise Division, Karur. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus quashing the impugned Order No.195 & 196/2013 dated 28.02.2013 passed by the First Respondent and consequently direct the Second Respondent herein to sanction the rebate claim of Rs. 3,70,129/-.

For Petitioner : Mr. T. Ramesh

For Respondents : Mr. S. Rajasekar
Junior Standing Counsel
for Ms. R. Hemalatha
Senior Standing Counsel

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O R D E R

The Petitioner has filed this writ petition, seeking for issuance of a writ of Certiorarified Mandamus to quash the impugned Order Nos.195 & 196 of 2013 dated 28.02.2013 passed by the first respondent and consequently direct the second respondent to sanction the rebate claim of Rs.3,70,129/-.

2. The petitioner who is a manufacturer of 100% Organic Cotton Yarn had exported goods during August to September 2009 and filed a rebate claim under Rule 18 of the Central Excise

Rules, 2002. The rebate claim filed by the petitioner amounting to Rs.3,70,129/- was sought to be denied by the Deputy Commissioner by issuing Show Cause Notice dated 31.05.2010.

3. The Show Cause Notice proceeded on the assumption that the exported goods namely 100% Organic Cotton Yarn manufactured and exported by the petitioner was exempted from payment of excise duty under Notification No.30/2004-C.E. Dated 09.07.2004.

4. The rebate claim was eventually rejected by the original authority namely, the Assistant Commissioner of Central Excise vide order in Original No.05/2010-(R) dated 09.08.2010.

5. However, the appeal of the petitioner before the Commissioner of Customs and Central Excise (Appeals) culminated Order in an Order of appeal No.19 of 2011 dated 10.02.2011. The Commissioner (Appeals) considered the decision of another exporter namely Valli Textiles Limited vs The Assistant Commissioner of Central Excise, Virudhunagar Division, Commissioner of Central Excise (Appeals), Madurai vide Order in Appeal No.480 of 2010 dated 26.10.2010 and 27.10.2010 and in the light of the above decisions of the Commissioner of Central Excise (Appeals) in Valli Textiles Case directed the lower authority to reconsider the rebate claim of the petitioner under Notification No.29/2004-CE dated 09.07.2004.

6. It is informed by the respondent that the said Valli Textiles Case was taken up in appeal before the Tribunal and was eventually dismissed as without jurisdiction and thereafter a revision petition filed by the Revenue under Section 35 EE of the Central Excise Act, 1944 has now been disposed on 06.03.2013 in RE: Valli Textiles Mills 2014 (314) E.L.T. 898 (G.O.I). As far as the Petitioner's revision petition is concerned, the first respondent has remitted the case back to await the order of the CESTAT in Valli Textiles Case.

7. The learned counsel for the respondents submit that the impugned Order is well reasoned and require no interference and therefore submits that the present writ petition is liable to be dismissed. The learned counsel for the Revenue also submits that the revision petition filed by the Revenue in Valli Textiles Mills pursuant to the dismissal of the appeal by CESTAT has answered the issue in favour of the Revenue in the context of the very same notifications which are subject matter of the present Writ Petition. He drew my attention to the Paragraph 9.2 which is reproduced below:

"9.2. The sub-rule (3) (i) & (ii) of Rule 11 of Cenvat Credit Rules, 2004 clearly stipulates that if a manufacturer opts for exemption from whole of duty of excise leviable on the said final product under a Notification issued under Section 5A of the Act or the said final product has been exempted absolutely under Section 5A of the said Act, he shall be required to pay an amount equivalent to the Cenvat credit taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in the stock and after deducting the said amount from the balance of Cenvat credit, if any lying in his credit, the balance if any still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export or for payment of Service Tax on any output service, whether provided in India or exported. The Notification No.30/2004-C.E provides for exemption from whole of duty and therefore respondent's case is covered under sub-rule (3) (i) of Rule 11 and not under sub-rule (3) (ii). Commissioner (Appeals) has erred in not considering the word 'or' after sub-rule (3) (i). Respondent has also referred to provision of sub-rule (3) (ii) and ignored the provisions of sub-rule (3) (i) of Rule 11. As such Government finds force in pleadings of the applicant department, and holds that the orders passed by original authority are legal and proper, and do not suffer with any legal infirmity."

8. The learned counsel for the Revenue further submits that since the matter was remitted back by the First Respondent to await the Order of the CESTAT in Valli Textiles case supra possibly an order would also have been passed and therefore the present Writ Petition is infructuous. However, there are no documents to substantiate the same at this point of time. The learned counsel for the Petitioner also submits that no further Orders have been passed pursuant to the remand.

9. I have considered the arguments advanced on behalf of the petitioner and the respondents.

10. The petitioner has exported 100% Organic Cotton Yarn which are classifiable under Sub Heading No.5205.11 of the Central Excise Tariff Act, 1985. There are two notifications exempting the said Organic Cotton Yarn. The petitioner claims to have paid excise duty at a concessional rate duty in terms of Notification No.29/2004-C.E. dated 09.07.2004 at 4%. On the other hand, it is the contention of the Respondents that goods are exempted in terms of Notification No.30/2004-C.E. dated 09.07.2004 and therefore the question of Petitioner paying excise duty by debiting their CENVAT account from capital goods was itself incorrect and therefore there is no question of rebate to be granted to the petitioner.

11. The learned counsel for the respondents further submitted that the exported goods being exempt from payment of excise duty under a notification issued under section 5 A of the Central Excise Act, 1944, the question of the petitioner paying duty by debiting CENVAT Account to claim rebate under rule 18 of the Central Excise Rules, 1944 does not arise.

12. I have considered the arguments advanced on behalf of the petitioner and the respondents.

13. The petitioner has unsuccessfully challenged the order denying rebate of Central Excise Duty all the way up to the 1st respondent, the Joint Secretary Revision Application, New Delhi under section 35EE Central Excise Act, 1944.

14. Both the notification namely Notification No.29/2004-CE dated 9.7.2004 and Notification No.30/2004-CE dated 9.7.2004 prescribes the rate of tax to be paid on the exported organic cotton yarn.

15. Under Notification No. 29/2004-CE dated 9.7.2004 a manufacturer is required to to pay tax at 4%. Whereas, under Notification No.30/2004-C.E dated 9.7.2004, a manufacturer could clear the goods without payment of duty provided condition there are more satisfied. As per the proviso to the said notification the notification does not apply to goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002.

16. The petitioner has opted to pay excise duty in terms of the Notification No.29/2004-CE dated 09.07.2004. Therefore, it cannot be said that the organic cotton yarn exported by the petitioner was not liable to Excise duty so as to deny the benefit of rebate claim under Rule 18 of the Central Excise Rules, 2002.

17. Notification No.30/2004 is a conditional notification which allows the manufacturer to clear the goods at nil duty provided no credit is availed on inputs of capital goods under the provisions of the CENVAT Credit Rules, 2002.

18. As per sub clause (1A) to Section 5A of the Central Excise Act, 1944 in case of excisable goods which is fully exempt from payment of excise duty the manufacturer cannot be Excise duty. However, in the facts of the case it is noticed that organic cotton yarn is exempt under Notification No.30/2004-CE dated 9.7.2004 under a conditional notification which the petitioner has not fulfilled.

19. It is the choice of the manufacturer whether to opt for the benefit of one of the notification. It cannot be forced on the petitioner merely because the revenue would stand to gain by denying rebate of central excise duty paid on the exported organic cotton yarn under rule 18 of the Central Excise Rules, 2002.

20. The fact that the petitioner had availed CENVAT credit on the inputs and capital goods and debited the same itself shows that the petitioner was not entitled to the benefit of Notification No. 30/2004-CE dated 9.7.2004.

21. Since the petitioner has utilised CENVAT credit for discharging Excise duty on the final product, show that the petitioner was therefore incapable of availing the benefit of Notification No. 30/2004-CE dated 9.7.2004.

22. Therefore, the impugned order of the 1st respondent upholding the order of the original and the appellate authority is unsustainable.

23. Therefore, denial of rebate of central excise duty paid by the petitioner on the exported goods under rule 18 of the Central Excise Rules, 2002 cannot be sustained.

24. These had been a denial of legitimate export incentives namely rebate of Central Excise duty paid on the excisable goods. Respondents have wrongly denied to the petitioner a legitimate export incentive. Therefore, the impugned order requires to be interfered.

25. Accordingly, the writ petition stands allowed with the consequential relief to the petitioner. The 2nd respondent

is therefore directed to pay the rebate of excise duty paid on the exported organic cotton yarn within a period of 45 days from the date of receipt of copy of this order together with interest under Section 11 BB of the Central Excise Act, 1944. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Joint Secretary Revision Application,
No.14, HUDCO Vishala Building,
8th Floor, Bhikaji Cama Place,
New Delhi - 110 066.
2. The Assistant Commissioner of Central Excise,
Central Excise Division, Karur.

+1cc to Mr.Ramesh , Advocate SR.No. 9730

+1cc to M/s.Hemalatha , Advocate SR.No. 10210

W.P. No. 21924 of 2013
and
M.P. No. 1 of 2013

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