

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2019

Pronounced on : 29.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28733 of 2011

Interfit India Ltd.,
112/3-D, Madhapur Road,
Kaniyur,
Coimbatore 641 659

... Petitioner

vs.

1.The Assistant Commissioner of Central Excise,
Coimbatore-IV Division,
ELGI Building, 1st Floor,
1237, Trichy Road,
Coimbatore 641 018.

2. The Commissioner of Central Excise (Appeals)
6/7 A.T.D.Street,
Race Course Road,
Coimbatore 641 018.

3.The Joint Secretary (Revision Application),
Department of Revenue,
Ministry of Finance,
14, Hudco Vishala Building, 'B' Wing,
6th Floor, Bhikaji Cama Place,
New Delhi 100 066.

4.The Commissioner of Central Excise,
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

... Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondents comprised in the proceedings of the 3rd respondent in order No.1773/10-CX,

dated 21.12.2010 and quash the same and consequently direct the 1st respondent to pay the rebate with interest as per Section 11BB of the Central Excise Act, 1944 read with Circular No.828/5/2006-CX dated 20.04.2006 issued by the Central Board of Excise & Customs.

For Petitioner : Mr.M.Rajendran
For Respondents : Mr.A.P.Srinivas,
Sr.Standing Counsel.

O R D E R

The petitioner is aggrieved by the impugned order dated 21.12.2010 passed by the 3rd respondent, Joint Secretary (Revision Application). By the impugned order, the 3rd respondent has dismissed the application filed by the petitioner under Section 35 EE of the Central Excise Act, 1944.

2. The said application was filed by the petitioner against the Order in Appeal Nos.1-6/2009 dated 8.1.2009. By the said order in Appeal, the 2nd respondent had dismissed appeals filed by the petitioner against the following Order in the Originals.

Sl.No.	Date	Order in Original No.	Amount
1	28.05.2008	291/2008-R	Rs.2,84,883/-
2	27.05.2008	295/2008-R	Rs.3,52,639/-
3	27.05.2008	296/2008-R	Rs.2,60,602/-
4	27.05.2008	300/2008-R	Rs.1,62,681/-
5	27.05.2008	301/2008-R	Rs.3,84,012/-
6	05.06.2008	304/2008-R	Nil

3. The petitioner is engaged in the manufacture of SG/Ductile Iron Machine Casting Pipe fittings. Goods were exported by the petitioner. The petitioner therefore claimed rebate of excise duty paid on the goods exported in terms of Rule 18 of the Central Excise Rules, 2002.

4. To facilitate an exporter to claim rebate of excise duty

paid on export goods, the Central Government has issued notification No.40/2001-CE dated 26.6.2001. The said notification sets out the procedure to be followed by an exporter of the goods, for filing rebate claims under Rule 18 of the aforesaid Rules for verification of the claims by the Department and ultimate sanction of the rebate claims.

5. The petitioner effected direct exports from its factory through Internal Container Depot (ICD) in Coimbatore under the supervision of the officers of the Excise Department. The export consignments were physically verified with the description and the quantity listed in Form ARE 1 with the Respective Export Invoices. After due verification, the consignments were exported.

6. The petitioner filed 6 rebate claims between January 2008 and March 2008 for the goods exported by it between November 2007 and January 2008 for a total sum of Rs.22,45,748/-.

7. The 1st respondent partially sanctioned the rebate claims for a sum of Rs.14,48,817/- by way of re-credit into the CENVAT Account of the petitioner's. The 1st respondent rejected the rebate claims to an extent of Rs.8,00,931/- on the ground that the description of the export goods in the export invoices were invariance within the description in Form ARE-1's and hence the petitioner was not entitled to rebate to that extent.

8. Aggrieved by the orders of the 1st respondent as detailed in the above chart, the petitioner had filed appeals before the 2nd respondent. In these appeals, the appellant relied on the decision of the Larger Bench of the tribunal rented Gauri Plasticulture (P) Ltd versus Commissioner of Central Excise, Indore 2006 (202) ELT 199 wherein cash refund was allowed following certain other decisions of the Tribunals. Since the 2nd respondent affirmed the orders of the 1st respondent, therefore revision applications were filed by the petitioner before the 3rd respondent under Section 35 EE of the Central Excise Act, 1944

9. In the impugned order dated 21.12.2010, the 3rd

respondent Joint Secretary to Government of India has dismissed the revision applications filed by the petitioner with the following observation:-

''7. From the perusal of the records, Government observes that the applicant has received the rough castings from their sister unit who have imported the materials required for manufacture of castings duty free under the Advance Authorisation. Moreover, the Dindigul Unit has accumulated cenvat credit earned on various inputs which were meant for manufacture of castings for other purposes. The duty free inputs were mixed with cenvated inputs for manufacture of rough castings. All GI/Ductile castings for Pipe Fittings were received from their unit in Dindigul in rough form. They were machined into pipe fittings and pipe fittings assemblies in the Kaniyar Unit from where they are cleared for pipe fittings assemblies in the Kaniyar Unit from where they are cleared for export. For this purpose, the export unit supposed to work under notification no.43/2001-CE(NT) dated 26.06.2001 under which they can receive the inputs to be used in the manufacture of the exported goods duty free and export under Rule 19(1) of the Central Excise Rules, 2002 and the export should be under Bond and not under claim for rebate of duty. This procedure has also been laid down in the Hand Book of Procedures which prescribes that in the case of Multiple Units the transfer of duty free materials for export production should be governed by the job-work procedure in Central Excise. Government observes that the procedure adopted by the applicant to get the rough castings on payment of duty paid from the Cenvat Credit Account if their Dindigul unit was just to encash the cenvat credit lying unutilized in their sister unit. As the credit earned was not as per legal provisions, so the duty paid from this earned cenvat credit could not be rebated in cash. Government finds no infirmity in the orders of the lower authorities in allowing recredit of the amount paid as duty on the exported

goods and accordingly uphold them.

8. Regarding the second issue where the description of the goods exported does not tally with those cleared from the factory of manufacture, Government observes that for claiming rebate of duty, the exporter has to correlate the goods those document like Shipping Bill/Bill of lading/Commercial invoice etc, to establish that the some goods have been exported by way of matching of description of goods etc.

9. In the instant case, the applicant has failed to do so. The Commissioner (Appeals) has already passed a very detailed and judicious order and Government finds no reason whatsoever to interfere in these orders and hence uphold them.

10. Revision application is rejecting being devoid of merit. "

10. Challenging the impugned Order, the petitioner submits that the impugned order is unsustainable and therefore denial of rebate claim to an extent of Rs.8,00,931/- was also justified. It is submitted that there is no basis to sanction the rebate claim by way of credit into the CENVAT account contrary to the mandate of the law as per the notifications which are applicable to the petitioner.

11. It is submitted that the variation in the description found in the shipping bills are only a minor clerical error and should not come in way of grant of substantive export incentive in the form of rebate of excise during under Rule 18 of the Central Excise Rule, 2002. It is further submitted that the Officers of the Customs had certified the exported goods and since there are not in doubt in the identity of the export goods, rejection of the rebate claim cannot be sustained. It is further submitted that as per Board Circular No.262/96/96-CE dated 6.11.1996 and 637/3/2003-CX, dated 3.1.2003, rebate claim in cash cannot be denied merely because export duty was paid by adjusting the CENVAT account.

12. According to the petitioner, there were no other

purchase order on the petitioner for export of "SG/Ductile Iron Machine Casting For Pipe Fitting" and therefore submits the rebate under Rule 18 of the Central Excise Rules, 2002 read with relevant procedures notification cannot be denied to the petitioner. The learned counsel for the petitioner therefore prayed that the writ petition be allowed.

13. Defending the orders of the respondent, the respondents have filed a detailed counter wherein it is stated that the petitioner had imported pig iron, Ferro, Silicon, magnesium, inoculant and graphite/petroleum coke without payment of duty under advance authorisation scheme. The raw materials were received by their Dindigul unit where rough castings were manufactured and thereafter transferred to Coimbatore Unit on payment of duty by debiting CENVAT account by following the job work procedure under Notification No.214/86-CE dated 25.3.1986 and therefore the final product should be exported without payment of tax. It is therefore submitted that credit earned on other inputs should not be used for payment of duty on final product and therefore the 1st respondent was justified in rejecting the rebate claims filed by the petitioner.

14. It is further submitted that even otherwise there are discrepancies in the exports invoices and the description given in the ARE-1 and the commercial invoice and therefore on this count also the rebate claim of the petitioner cannot be allowed.

15. This case was heard and reserved for passing orders on 13.12.2019. The petitioner was called upon to file a sample copy of the purchase order placed by foreign buyer so as to find out the description of the goods which were to be exported by the petitioner. The learned counsel for the petitioner has filed a copy of a purchase order dated 23.10.2007 wherein the description of the goods to be supplied by the petitioner is "SG/Ductile Iron Machine Casting Pipe Fitting Assembly". In some of the export invoice, shipping bill and the commercial invoice, the petitioner has however described the export product as "SG/Ductile Iron Machine Casting for Pipe Fitting" which according to the petitioner was typographical mistake .

16. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

17. From a perusal of the records, it is noticed that the petitioner had imported goods under Advance Authorisation Scheme under the relevant Foreign Trade Policy.

18. Goods imported under Advance Authorisation Schemes are exempted are from payment of customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty et cetera. An importer has to 1st discharge export obligation undertaken under the Advance Authorisation by exporting finished goods out of the country. Had the petitioner used only duty paid goods in the manufacture of export goods the petitioner would have been entailed rebate under Rule 18 of the Central Excise Rules, 2002.

19. In the present case, however the petitioner has utilized not only goods/inputs imported under the Advance Authorisation Scheme but also goods/inputs procured on payment of excise duty/additional duty of customs equivalent to central excise duty on which it availed CENVAT Credit to manufacture goods exported.

20. There is no discussion in the impugned orders of the 1st, 2nd respondent and the 3rd respondent as to under which customs notification the goods were imported by the petitioner under the Advance Authorisation Scheme. The relevant clauses from the Foreign Trade Policy are also not discussed except para 4.5 which deals with only clearance to the unit without availing CENVAT credit.

21. The petitioner has used goods/inputs procured on payment of Central Excise duty and Additional Duty of Customs equivalent to Central Excise Duty along with goods imported under the Advance Authorisation Scheme to manufacture of export goods to claim rebate under Rule 18 of the Central Excise Rules, 2002 on the finished goods exported from the Coimbatore unit of the petitioner.

22. Normally, only after export obligation undertaken/specified in the Advance Authorisation is discharged, a manufacturer would be entitled to either sell the manufactured goods in the domestic tariff area i.e in the domestic market on payment of excise duty or export them and claim rebate of excise duty paid on such goods under Rule 18 of

the Central Excise Rules, 2002. Further as per para 4.5 of the Foreign Trade Policy, 2004-09 read with the relevant Handbook of Procedure it has been specified that an applicant holding advance authorisation can transfer imported goods to its other units after proper intimation to the jurisdictional Excise authorities on a clear understanding that no CENVAT shall be claimed on such transferred inputs.

23. To allow rebate claim to the petitioner without the petitioner discharging the obligation undertaken under the relevant customs notification read with Foreign Trade Policy under which the inputs were imported may result in unintended incentives being granted to the petitioner without proper examination.

24. I am therefore of the view that the matter would require a fresh consideration by the 1st respondent. The 1st respondent is therefore directed to examine whether the petitioner would be gaining any unintended export incentive under Rule 18 of the Central Excise Rules, 2002 by utilising inputs procured without payment of duty/taxes under the relevant Advance Authorisation Scheme.

25. Under these circumstances, the impugned order passed by the 3rd respondent is set aside and the cases are remitted back to the 1st respondent to pass a speaking order within a period of three months from the date of receipt of copy of this order after hearing the petitioner. In case, the petitioner is held entitled to rebate otherwise, the respondent shall not deny the rebate claim on account of minor variation in the descriptions between the export documents and Form ARE-1.

26. The writ petition thus stand disposed by way of remand. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kkd

To

1.The Assistant Commissioner of Central Excise,
Coimbatore-IV Division,
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Coimbatore 641 018.

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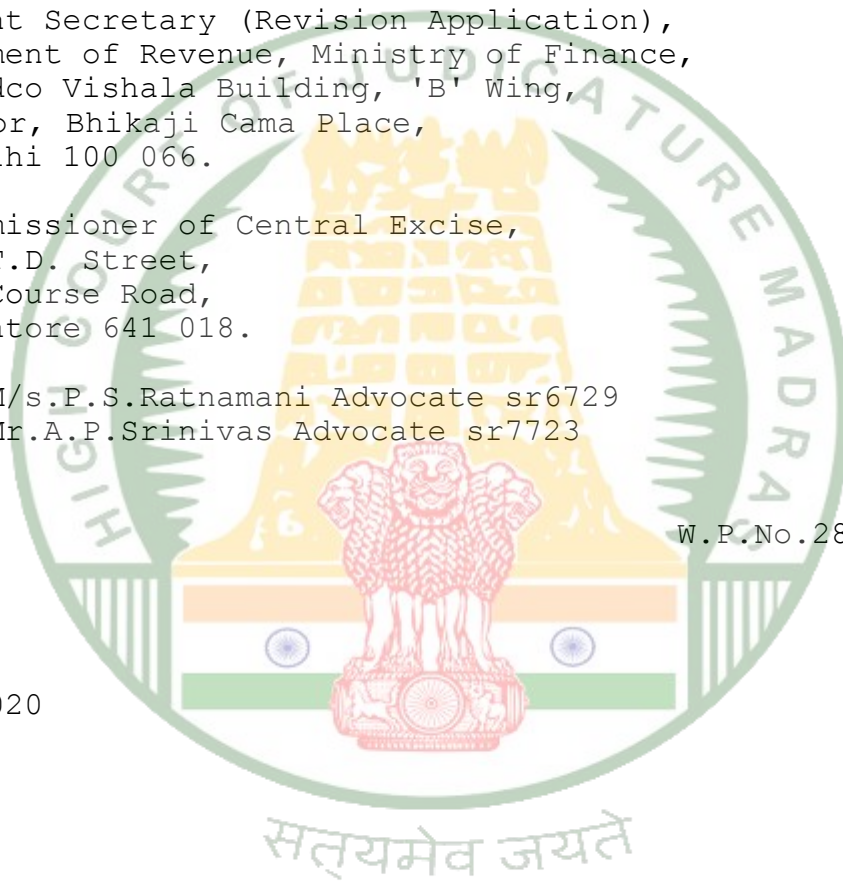
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+1 cc to M/s.P.S.Ratnamani Advocate sr6729

+1 cc to Mr.A.P.Srinivas Advocate sr7723

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