IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.Nos.20995 to 20998 of 2016 & 2578 to 2581 of 2017
and
WMP.Nos.17967 and 17969,17971 to 17973 of 2016

W.P.No.20995 to 20998 of 2016

M/s.G.T.Jayanti Agrochem (India) Pvt. Ltd.,
Silver Cascade Complex,
No.41, Strotten Muthiah Mudali Street,
Sowcarpet, Chennai - 600 079.
Rep.by its Director Shri.Jayanti Lal C.Joshi.
...Petitioner in all 4 WPs

Vs

1.The Commissioner of Customs (Appeal),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

2.The Assistant Commissioner of Customs (Refunds),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001. ...Respondents in all 4 WPs

W.P.Nos.2578 to 2581 of 2017

M/s.HLG Trading Space E
Third Floor, Surya Kiran Building,
92, The Mall, Ludhiana - 141001,
Rep.by its Authoraised Signatory,
Shri.Gagan Goyal ...Petitioner in all 4 WPs

Vs

The Assistant Commissioner of Customs
(Refunds-Sea),
Office of the Commissioner of Customs,
Chennai-IV, Customs House,
No.60, Rajaji Salai,
Chennai-01 ...Respondents in all 4 WPs

PRAYER in W.P.No.20995 to 209989 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records 1st respondent, leading to issuance of Order in Appeal in C.Cus-II No.233/2016 dated 09.03.2016, and quash the same, for being contrary to the statutory provisions more particularly, Section 3(5) of the Customs Tariff Act, 1975.

PRAYER in WP No.2578 of 2017
Calling for the records of the Respondent, leading to issuance of Order in Original No.51949/ 2016 dated 14.12.2016 in S-25/ SAD/ 5465/ 16 and F. N.S24/ SAD/ 4009/ 2016- Refunds, and quash the same, for being contrary to the statutory provisions more particularly, Section 3(5) of the Customs Tariff Act, 1975 and further direct the Respondent to process the refund claim afresh in accordance with law

PRAYER in WP No.2579 of 2017
Calling for the records of the Respondent, leading to issuance of Order in Original No.52027/ 2016 dated 22.12.2016 in S-25/ SAD/ 5505/ 16 and F. N.S24/ SAD/ 2715/ 2016- Refunds, and quash the same, for being contrary to the statutory provisions more particularly, Section 3(5) of the Customs Tariff Act, 1975 and further direct the Respondent to process the refund claim afresh in accordance with law

PRAYER in WP No.2580 of 2017
Calling for the records of the Respondent, leading to issuance of Order in Original No.52043/ 2016 dated 22.12.2016 in S-25/ SAD/ 5518/ 16 and F. N.S24/ SAD/ 4458/ 2016- Refunds, and quash the same, for being contrary to the statutory provisions more particularly, Section 3(5) of the Customs Tariff Act, 1975 and direct the Respondent to process the refund claim afresh in accordance with law

PRAYER in WP No.2581 of 2017
Calling for the records of the Respondent, leading to issuance of Order in Original No.52092/ 2016 dated 22.12.2016 in S-25/ SAD/ 5555/ 16 and F. N.S24/ SAD/ 2151/ 2016- Refunds, and quash the same, for being contrary to the statutory provisions more particularly, Section 3(5) of the Customs Tariff Act, 1975 and direct the Respondent to process the refund claim afresh in accordance with law

For Petitioner : Mr.B.Satish Sundar
(in all writ petitions)

For Respondents : Mr.A.P.Srinivasan, SSC
(in all writ petitions)

COMMON ORDER

Today, the matter is called through video conferencing. By consent of both the parties, all these Writ Petitions are taken up for final disposal.

2. In all these Writ Petitions, the decision of the respondents to reject the petitioners' request for re-fund of Special Additional Duty (SAD) through Orders-in-Original / Appellant Orders are put under challenge.

3. The Central Excise and Service Tax Appellate Tribunal (CESTAT), Chennai has passed final order No.40889 - 40898 of 2017 dated 12.06.2017, in the case of M/s.Kubota Agricultural Machinery India Private Limited, Chennai, relying on the case of Vazir Sultan Tobacco Co.Ltd-1996 (83) ELT 3 SCC and Pekay Rolling Mills Vs Asst. Commissioner 2009(134) STR 305 SC and had decided the issue with regard to entitlement of re-fund of Special Additional Duty, in favour of the importer.

4. Based on the Assistant Commissioner of Customs, through his written instructions dated 12.02.2018, the learned Standing Counsel for the respondents has opined that since the aforesaid order of the CESTAT, dated 12.06.2017 has been accepted by the Committee of Commissioner and they have also sanctioned and disposed of all pending re-fund claims based on the special order and that, similar orders could be passed in the present writ petitions also.

5. In view of the in-principle decision taken by the respondents to re-fund the Special Additional Duty and in consideration of the submission made by the respondents in this regard, this Court does not intend to go into the merits of the grounds raised by the petitioners herein.

6. Accordingly, all these Writ Petitions stand allowed. The petitioners are granted liberty to file an appropriate application before the concerned authorities seeking for re-fund of the Special Additional Duty paid by them, at the earliest. On receipt of such an application, the concerned authority shall pass necessary orders for re-fund of Special Additional Duty, atleast within a period of 8 weeks from the date of receipt of the application. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

hvk

To

1.The Commissioner of Customs (Appeal),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

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

3.The Assistant Commissioner of Customs(Refunds-Sen)
Custom House, Chennai - IV,
No.60, Rajaji Salai, Chennai - 1

WP.Nos.20995 to 20998 of 2016 & 2578 to 2581 of 2017
and
WMP.Nos.17967 and 17969 to 17973 of 2016

SVI(CO)
KKV/22/10/2020