IN HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2020
CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.35396 of 2012
and
W.P.No.422 of 2013
and
M.P.No.1 of 2012 & M.P.No.1 of 2013

M/s.LG.Electronics India Pvt. Ltd.,
Represented by its Authorised Signatory,
Plot No.51, Udyog Vihar,
Surajpur-Kasna Road,
Greater Noida 201 306. ... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner of Customs (Refunds),
Custom House,
Rajaji Salai, Chennai 600 001. ... Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the orders passed by the respondent vide Order in Original Nos.19290 & 19289 of 2012, dated 14.08.2012 and quash the same and consequently direct the respondent to consider the refund application dated 01.11.2011 of the petitioner.

For Petitioner : Mr.S.Ganesh Aravindh for M/s.Lakshmi Kumaran in both W.Ps.

For Respondent : Mr.S.R.Sundar, Senior Standing Counsel in both W.Ps

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Heard the learned counsel for the petitioner and the respondent.

2.In these Writ petitions, the petitioner has challenged the impugned orders both dated 14.08.2012 in Order-in-Original Nos.19290 & 19289 of 2012.

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3.The petitioner had imported the goods and claimed refund of Special Additional Duty of Customs paid under Section 3(5) of the Customs Tariff Act, 1975 in terms of Notification No.102/2007-Cus dated 14.09.2007.

4.The petitioner was issued with the two deficiencies memos cum notice of personal hearing dated 10.07.2012. The petitioner gave its reply on 24.07.2012 to the respective deficiencies memos dated 10.07.2012 and requested the respondent to process the refund claims as soon as possible. The respondent scrutinized the refund claims and on noticing the discrepancies pointed out in the respective deficiencies memos were not removed, the respondent rejected the respective refund claims vide respective orders impugned herein.

5.Challenging these orders, the petitioner has filed the present Writ Petitions, even though the petitioner has an alternate remedy before the Commissioner of Customs (Appeals) under Section 128 of the Customs Act, 1962.

6.It is contention of the learned counsel for the petitioner that before rejecting the refund claim application, the respondent should have been put the petitioner to notice even if the petitioner had failed to remove deficiencies pointed out in the respective memos.

7.On the other hand, it is the contention of the respondent that the petitioner has an alternate remedy by way of an appeal before the Commissioner of Customs (Appeals). The petitioner had requested the respondent to process the refund claims under impression and it had complied with the deficiencies pointed out in the respective memos dated 10.07.2012.

8. It is noticed that in the impugned order, the respondent has found the mismatch between the payment of VAT on the sale effected by the petitioner and that the petitioner had not complied with the requirement of Public Notice dated 14.06.2011 issued by the Commissioner of Customs (Sea Port-Exports). A Public Notice No.39/2011 dated 14.06.2011 also has been issued pursuant to the CBEC Circular No.16/2008 dated 13.10.2008. Clause-H of the Circular dated 14.06.2011 deals with the nature of certification by a Chartered Accountant.

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9.It is the case of the respondent that as per the Public Notice, the Chartered Accountant's certificate has to be from a Statutory Auditor or the VAT Auditor and not from any other Chartered Accountants. In this case, the certificate was given by M/s. Agarwal Seth & Co and not by M/s.VSR & Co who were the Statutory Auditors/Chartered Accountant. The Certificate of M/s. Agarwal Seth were found to be deficient. It is further stated

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that the Chartered Accountant had also not given details of his registration / enroll number.

10.I have considered the arguments of the learned counsels for the petitioner and the respondent.

11.The refund claims of the petitioner has been denied under Notification No.102/2007-Cus dated 14.09.2007. This is on account of purported failure on the part of the petitioner to correct the deficiencies pointed out in the respective memos issued to the petitioner on 10.07.2012 in terms of Public Notice No.39/2011 dated 14.06.2011. Since the refund claims were to be rejected, I am of the view that the respondent ought to have issued proper notices to the petitioner and called upon the petitioner to show cause as to why the refund claims of the petitioner should be rejected, even if the deficiencies pointed out in the respective memos were not rectified by the petitioner.

12.In Vasta Bio-Tech Pvt. Ltd., Vs. Assistant Commissioner of Cus., Chennai, 2018 (360) E.L.T. 234 (Mad), this Court under a similar circumstances had set aside the order stating that the order was passed in violation of principle of natural justice. I find in this case also there is violation of principle of natural justice though the petitioner failed to remove the deficiencies pointed out in the respective memos .

13.Under these circumstances, the impugned orders dated 14.08.2012 may be treated as show cause notices. The petitioner shall file its reply within a period of thirty days from the date of receipt of a copy of this order. The respondent shall call upon the petitioner for a personal hearing and thereafter pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order.

14.These Writ Petitions stand disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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सत्यमेव जयते

To

The Assistant Commissioner of Customs (Refunds),
Custom House,
Rajaji Salai, Chennai 600 001.

+1cc to Mr.S.R.Sundar, Advocate, SR.No.42881.
+2ccs to Mr.Lakshmi Kumaran, Advocate, SR.No.39341.

W.P.No.35396 of 2012
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RR(CO)
CSR: 21/01/2020

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