

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 10877 of 2017
and
W.M.P. No. 11822 of 2017

Leo Prime Comp Private Limited (EOU)
R.S. No.17/3, Gothi Industrial Complex,
Vazhudavur Road, Mettupalayam,
Puducherry - 605 009.
Represented by its Finance Manager ... Petitioner

Vs

Deputy Commissioner of Central Excise,
Puducherry I Division,
No.14, Municipal Street,
Ajeez Nagar, Puducherry - 605 010. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the Respondent in impugned Order in Original No.1-26/2017(Rebate) and quash the Order dated 25.01.2017 passed therein and further direct the Respondent to pay the amount of rebate of Rs.1,16,93,725/- along with interest at 12% per annum from date of rebate claim.

For Petitioner : Mrs. Pushya Sitaraman,
Senior Counsel
For Mr.M.S.Visvanathan
Rep. by the petitioner Company

For Respondent : Ms. Hema Murali Krishna
Standing Counsel

ORDER

This writ petition has been filed by the Petitioner, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the Respondent in impugned Order in Original No.1-26/2017(Rebate) and quash the Order dated

25.01.2017 passed therein and further direct the Respondent to pay the amount of rebate of Rs.1,16,93,725/- along with interest at 12% per annum from date of rebate claim.

2. I have heard the learned senior counsel Mrs.Pushya Sitaraman for the Petitioner for Mr.M.S.Visvanathan, Advocate, the Insolvency Resolution Professional appointed by the National company law Tribunal to represent the interests of the petitioner company.

3. The petitioner is a defunct 100% EOU. It has stopped manufacturing goods on account of several factors. During the period in dispute the petitioner had exported goods and claimed rebate of Central Excise Duty under rule 18 of the Central Excise Rules, 2002.

4. It was the contention of the Department that the petitioner was not entitled to rebate claim under rule 18 of the Central Excise Rules, 2002 as the goods on which excise duty was paid by the petitioner were exempt from payment of excise duty in terms of Notification No.24/2003-CE dated 31.3.2003 and exemption did not apply to such goods if brought to any other place in India.

5. The goods exported by the petitioner were exempt from payment of excise duty. However, despite Section 5A(1A) of the Central Excise Act, 1944 containing an embargo on the petitioner from paying excise duty, the petitioner paid excise duty in a bid to liquidate the excess of CENVAT credit accumulated and lying unutilized with it in the light of the decision of this court rendered in Orchid Healthcare versus Union of India. 2013 (290) ELT 504.

6. It appears that an appeal is pending against the said decision of before the Division Bench of this Court.

7. It is submitted that the petitioner unit has ceased to operate. It is submitted that had the respondents decided the issue then and there, the petitioner may have utilised the credit for DTA clearance before it was deregistered as a 100% EOU unit and surrendered its Central Excise registration. It is submitted that the rebate claim were disallowed only on 25.1.2017 in respect of 25 rebate claims filed under rule 18 of the Central Excise Rules, 2002 for the exports made during the period commencing from March 2012 to October 2013 under 25 rebate claims under 25 different show cause notices which were issued between June 2012 to October 2013.

8. It is further submitted that the petitioner had surrendered the Excise registration as early as 20.12.2013 and since the respondents decided the issue only on 25.1.2017 the

petitioner could not utilise its CENVAT credit which had been accumulated and debited as excise duty.

9. The learned counsel for the respondent on the other hand submits that the petitioner has an alternate remedy by way of an appeal before the appellate Commissioner and has wrongly invoked the jurisdiction of this court under Article 226 of the Constitution of India. He submits that the writ petition is liable to be dismissed on this short point alone. On merits it is submitted that as a DTA petitioner could not have performed paid excise duty to claim rebate under Rule 18 of the Central Excise Rules, 2002.

10. I have considered the arguments advanced by the learned counsel for petitioner and the respondent.

11. The petitioner was not required to pay excise duty in terms of Notification No.24/2003 dated 1.4.2003. As per the said notification all excisable goods produced/manufactured in an Export-Oriented Undertaking was exempt from whole of duty leviable thereon under section 3 of the Central Excise Act, 1944 and additional duty of excise leviable thereon under section 3 of the Additional Duty of Excise (Goods of Special Importance) Act, 1957 and additional duty of excise leviable thereon under section 3 of the Additional Duty of Excise [Textile and Textile Articles] Act, 1978. Only exception under the above exemption notification was under the proviso which reads as under:-

"Provided that the exemption contained in this notification in respect of duty of excise leviable under section 3 of the Central Excise Act shall not apply to such goods if brought to any other place in India."

12. The proviso was admittedly not applicable to the facts of the present case. As per Section 5 (1A) of the Central Excise Act, 1944, the petitioner could not have paid excise duty. Therefore, the petitioner could not have also paid excise duty good export to claim rebate.

13. At the same time, no provision has been brought to the notice of this court to show how the input tax credit/credit availed on capital goods was allowed to accumulate and lapse.

14. Under a somewhat similar circumstance in Union of India versus Slovak India Trading Co-Private Limited 2006 (201) ELT 559 the Karnataka High Court has granted refund of CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2002 even though the petitioner was not eligible for refund of excise duty paid on the inputs used in the manufacture of exported goods under

notification issued under Rule 19 of the Central Excise Rules, 2002 on the ground that the company had closed on its factory and in view of the said company coming out of MODVAT (actually CENVAT) scheme. The court there answered substantial question of law in favour of the company.

15. Further appeal to the Honourable Supreme Court in Union of India versus Slovak India Trading Co-Private Limited 2008 (223)ELT A170 (S.C) was dismissed with the following observation:-

"Learned ASG appearing for the Union of India fairly concedes that those decisions of the tribunal, which were relied upon by the tribunal, have not been appealed against. In view of the confession made by the learned ASG, this Special Leave Petition is dismissed".

16. Though, the above decision was rendered in the context of Rule 5 of the CENVAT Credit Rules, 2002, the reasoning adopted for granting relief to the petitioner is relevant to the facts and circumstances of the present case in the peculiar circumstances of the case as the petitioner has also closed down the operations. The accumulated cenvat credit which was debited in an attempt to claim rebate of excise duty paid on the export goods under Rule 18 of the aforesaid Rules was not re-credited back to the petitioner. The cenvat credit not only remained unutilised in view of the rejection of rebate claim but also on account of the fact that the amount was not re-credited back to the petitioner's account. The petitioner has also closed down its factory and therefore, it can no longer be used.

17. If the petitioner had continued to carry on the activity and registered itself under the provisions of the Central Goods and Service Tax, 2017, it would have been entitled to transitional credit under section 142 of the Central Goods and Service Tax Act, 2017. If the petitioner could utilise it, it could not claim refund of such duty under the provisions of the aforesaid Act.

18. As a "Export Oriented Unit" the petitioner would have been entitled to receive goods without payment of duty under various Customs as Central Excise Notification. Export-oriented units being engaged in generation of foreign exchange for the country have been exempt from payment of duty not only on their procurements but also on final products which are exported. Not only goods used by them are exempt in terms of notification No.22/2003-CE dated 31.03.2003 but also the final products are exempt under in terms of Notification No.24/2003 - CE24/2003 dated 31.03.2003. The benefit of notification No.24/2003-C.E

dated 31.3.2003 conferred on export-oriented units has however resulted in a disability to the petitioner inasmuch as the petitioner procured goods on payment of excise duty and additional duty of customs and allowed such duty to be accumulated in their Cenvat Account. Had the petitioner availed the benefit of Notification No.22/2003-CE dated 31.03.2003 there would have been no such accumulation.

19. Since 100% EOU like the petitioner are entitled to procure goods without payment of duty under Notification No. 22/2003-CE dated 31.03.2003 but had procured on payment of duty, I am of the view that the amount of duty paid can be directed to be refunded back to the petitioner as no duty was payable by them even otherwise.

20. I direct therefore the respondent to ascertain the amount that has remained unutilised in view of the denial of rebate claim and refund the same to the petitioner within a period of three months from date of receipt of a copy of this order in the light of the above observation and in the light of the decision of the Karnataka High Court in Union of India Versus Slovak India Trading Co-Private Limited 2006 (201.) ELT559 as affirmed before the Honourable Supreme Court in Union of India versus Slovak India Trading Co-Private Limited 2008 (223)ELT A 170 (S.C).

21. The Writ Petition stands disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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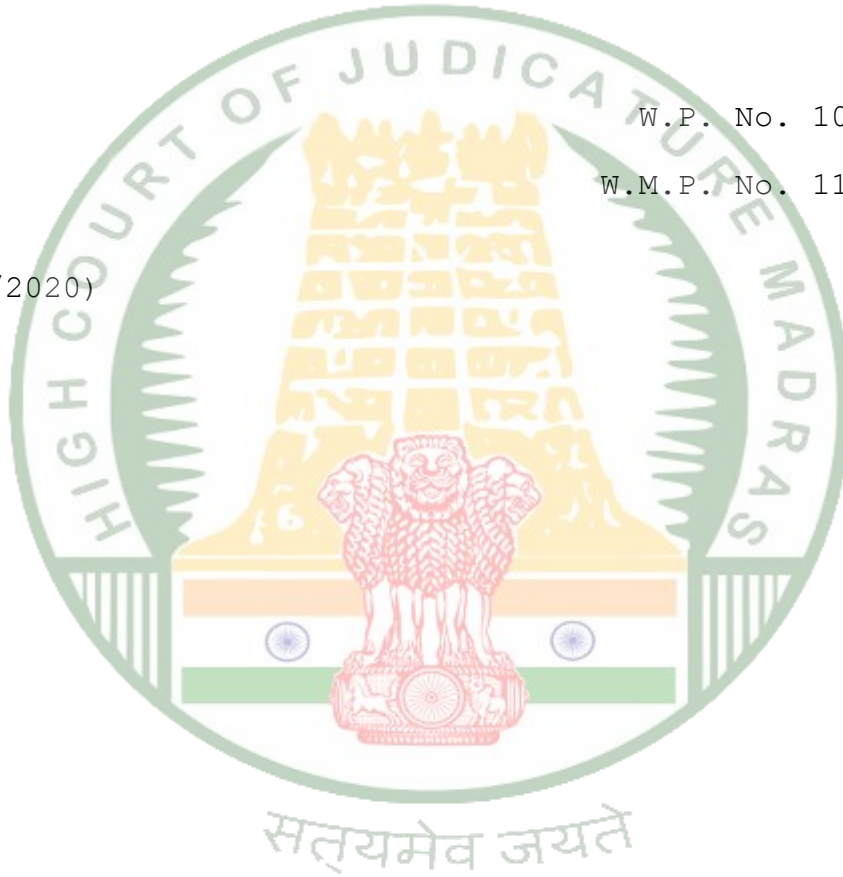
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To
Deputy Commissioner of Central Excise,
Puducherry I Division,
No.14, Municipal Street,
Ajeez Nagar, Puducherry - 605 010.

+1 CC to Mr.Arun Kurian Joseph, Advocate, sr 10082
+1 CC to Mrs.Hema Murali Krishna, Advocate, sr 9771

W.P. No. 10877 of 2017
and
W.M.P. No. 11822 of 2017

SR (CO)
AT (21/05/2020)



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