IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 11451 of 2017
and
W.M.P. Nos. 12429, 12430 & 27435 of 2017

M/s.Supreme Art Works,
Represented by its Partner
J. Haresh Baksani, Partner,
Having is factrory cum office at
No.42, K.K.R. Avenue Road,
Perambur (Moolakadai),
Chennai - 600 011. ... Petitioner

Vs

1. Union of India,
Represented by The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi - 110 001.

2. Customs & Central Excise
Settlement Commission,
Additional Bench, II Floor,
Narmada Block, Custom House,
Chennai - 600 001.

3. The Commissioner of Customs (Exports),
Custom House, Chennai - 600 001.

4. The Assistant Commissioner of Customs,
EPCG Section, Custom House,
Chennai - 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order No.4/2014-CUS dated 28.01.2014 passed by the Second Respondent, to quash the same, further, direct the Second Respondent to quantify the interest in terms of the Notification No.46/2013-Cus dated 26.09.2013 and P.N. No. 22 (RE-2013) 2009-2014 dated 12.08.2013 issued by DGFT amounting to Rs.48,58,231/- and consequentially direct refund of an excess amount of Rs.22,02,559/- paid by the Petitioner towards interest liability to prove its bonafides.

For Petitioner : Mr. S. Shyam Kumar

For Respondents : Mr. K.S. Ramasamy
Central Govt. 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 relating to the order No.4/2014-Cus dated 28.01.2014 passed by the Second Respondent, to quash the same, further and to direct the Second Respondent to quantify the interest in terms of the Notification No.46/2013-Cus dated 26.09.2013 and P.N. No. 22 (RE-2013) 2009-2014 dated 12.08.2013 issued by DGFT amounting to Rs.48,58,231/- and consequentially direct refund of an excess amount of Rs.22,02,559/- paid by the Petitioner towards interest liability to prove its bonafides.

2. The Petitioner has challenged the impugned order passed by the Settlement Commission-Second Respondent on 28.01.2014 denying the Petitioner the benefit of Notification No.46/2013-Cus dated 26.09.2013, Sl.No.22 to the aforesaid notification reads as under:

> "5. In a case of default in export obligation, when the duty on goods is paid to regularise the default, the amount of interest paid by the importer shall not exceed the amount of duty if such regularisation has been dealt in terms of Public Notice of the Government of India in the Ministry of Commerce No.22 (RE-2013)/2009-2014 dated the 12th August, 2013."

Notification No.46/2013-Cus dated 26.09.2013, Sl.No.22 amends, the Petitioner had availed the benefit of Notification No.49/2000-Cus dated 27.04.2000, for importing capital goods under the Export Promotion Capital Goods Scheme (EPCGS) under the Foreign Trade Policy, 2002-2006.

3. The Settlement Commission appears to have referred Circular No.40/2013-Cus dated 09.10.2013 as per which only in the event of bonafide defaults, the benefit of Notification No.46/2013-Cus dated 26.09.2013 read with P.N. No.22 (RE-2013)/ 2009-2014 can be granted. After the impugned order was passed by the Settlement Commission, the Petitioner filed an application to recall the impugned order and sent several representations to the Settlement Commission praying for recalling the order to give the Petitioner the benefit of

Notification No.46/2013-Cus dated 26.09.2013 read with P.N. No. 22 (RE-2013)/2009-2014.

4. Though the Petitioner has sent several representations along with a miscellaneous application to recall the impugned final order dated 25.08.2015, the Additional Commissioner attached to the Settlement Commission informed the Petitioner that the order passed by the Settlement Commissioner under Section 127(J) of the Customs Act, 1962 is conclusive and cannot be re-opened by the Settlement Commission. Whether such orders are conclusive or inconclusive or final or whether they can be recalled can be decided only by the Settlement Commission.

5. Since no orders have been passed by the Settlement Commission in response to the applications filed by the Petitioner to recall the impugned order, I am of the view that the present Writ Petition can be disposed with a direction to the Settlement Commission to pass appropriate order in the application filed by the Petitioner on 25.08.2015 to recall the impugned order. It is made clear that the Settlement Commission shall pass appropriate orders on merits without getting influenced with the observation contained herein.

6. The present Writ Petition is disposed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Government of India,
Central Board of Excise & Customs,
North Block, New Delhi - 110 001.

2. Customs & Central Excise
Settlement Commission,
Additional Bench, II Floor,
Narmada Block, Custom House,
Chennai - 600 001.

3. The Commissioner of Customs (Exports),
Custom House, Chennai - 600 001.

4. The Assistant Commissioner of Customs,
EPCG Section, Custom House,
Chennai - 600 001.

+1cc to M/s.K.S.Ramaswamy, Advocate Sr.82
+2cc to M/s.S.Shyam Kumar, Advocate Sr.42

W.P. No. 11451 of 2017
and
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rp[co]
srg 11/02/2020