IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.246 to 253 of 2017
and
WMP.Nos.260, 262, 264, 266, 267 to 270 of 2017

M/s.Microweb Enterprises Pvt., Ltd.,
Rep by its Director Mr.Ramsingh Agarwal,
Suite No.226, Bussa Industrial Premises Co-op.Soc.Ltd.,
Century Bazar Lane, Prabhadevi,
Mumbai-400 025. ..Petitioner in all W.Ps.

-Vs-

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

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

COMMON PRAYER in W.P.Nos.246 to 249 of 2017: Writ Petitions filed under Article 226 of Constitution of India, praying to issue a writ of certiorari, calling for the records of the first respondent culminating in the issue of order in Appeal C.Cus.II.Nos.815/2016, 816/2016, 817/2016 and 818/2016 respectively dated 23.08.2016 from File Nos.C3-II/554/R/2016-SEA, C3-II/556/R/2016-SEA, C3-II/584/R/2016-SEA and C3-II/585/R/2016-SEA respectively and quash the same.

COMMON PRAYER in W.P.Nos.250 to 253 of 2017: Writ Petitions filed under Article 226 of Constitution of India, praying to issue a writ of certiorari, calling for the records of the second respondent culminating in the issue of confirmed Demand Notice Nos.10/2016, 11/2016, 12/2016, 13/2016 respectively dated 20.10.2016 from file Nos.S24/SAD/2753/2014, S24/SAD/3086/2014, S24/SAD/3085/2014- S24/SAD/3087/2014-Refunds respectively and quash the same.

For Petitioner : Mr.S.Murugappan
(in all WPs)

For Respondents: Mrs.Hema Muralikrishnan
(in all WPs) Senior Standing Counsel

COMMON ORDER

Today, the matter is listed through Video Conferencing. By consent of both the parties, all these Writ Petitions are taken up for final disposal.

2. In accordance with the Notification No.102/2007 dated 14.09.2007, providing exemption by way of refund of Special Additional Duty (SAD) of Customs, when the importer establishes payment of VAT on the subsequent sale of the imported goods, refunds of the 4% Special Additional Duty of Customs was sanctioned by the second respondent. These sanctions were reviewed under Section 129D(2) of the Customs Act and in the appeals filed by the Customs authorities, the sanction of refund was held to be incorrect. Consequently, the second respondent had passed 4 orders of recovery of the refunds granted earlier. While the 4 Orders-in-Appeal dated 23.08.2016 are under challenge in W.P.Nos.246 to 249 of 2017, consequently, 4 recovery orders are under challenge in W.P.Nos.250 to 253 of 2017.

3. The CESTAT, had earlier passed orders in favour of the dealers, holding that, so long as appropriate VAT/Sales Tax was paid, the SAD refund was admissible. These CESTAT orders were referred to by the learned Standing Counsel for the department and had conceded that the issue of refund of SAD was in favour of the importer and accordingly, this Court, in the cases of Goyel Impex and Industries Limited vs. The Assistant Commissioner of Customs, Chennai reported in 2019 (9) TMI 1331 and M/s.Aditya International Ltd. & Others vs. The Commissioner of Customs (Appeals-II) & Others reported in 2020 (4) TMI 317, had allowed the writ petitions and ordered for refund of the SAD in favour of the importer.

4. The learned Standing Counsel appearing for the respondents also conceded that the issue of refund of SAD is in favour of the petitioner herein, in view of the earlier decisions of this Court referred above.

5. Accordingly, all the impugned orders are quashed and the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.S.Murugappan, Advocate, Sr.No.31570

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rr ii (18/11/2020)