BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.10.2020
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12969 of 2020

Vedanta Limited,
SIPCOT Industrial Complex,
Madurai Bye-pass Road,
T.V.Puram PO,
Tuticorin – 628 002. ... Petitioner

Vs.

1. The Assistant Commissioner of Customs,
Customs House, Tuticorin – 628 001.

2. The Commissioner of Customs,
Customs House,
Tuticorin – 628 001. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to implement the Order-in-Appeal dated 18.02.2020 and consequently disburse the refund due to the petitioner in terms of the Order-in-Appeal dated 18.02.2020 along with appropriate interest at the applicable rate within a reasonable time as may be stipulated by this Court.

For Petitioner : Mr.Y.Prakash

For Respondents : Mr.B.Vijay Karthikeyan

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents.

2. The case of the writ petitioner is that they had suffered an adverse order at the hands of the Assistant Commissioner of Customs, Customs House, Tuticorin, in Order-in-Original No.286 of 2018 dated 26.06.2018. This was challenged by the petitioner before the Commissioner of GST and Central Excise(Appeals) Coimbatore @ Tiruchirappalli. The appeal filed by the petitioner was allowed on 18.02.2020. The operative portion of the appellate authority's order reads as follows:-

"The Appeal filed by the Appellant is allowed and the Order-in-Original No.286/2018 dated 26.06.2018 passed by the Assistant Commissioner of Customs (Refund), Custom House, Tuticorin(LAA) is set aside. The Appellant is eligible for refund of Rs.32,18,00,042/-(Rupees Thirty Two Crore Eighteen Lakh and Forty Two Only) and Rs.3,75,64,269/-(Rupees Three Crore Seventy Five Lakh Sixty Four Thousand Two Hundred and Sixty Nine only) as cash refund, being the value of DEPB/FPS scrip in the light of the discussions above."

3. All that the petitioner wants is that this order should be implemented and refund due to the petitioner must be made without any delay along with appropriate rate of interest.

4. Since the petitioner's request was not complied with, this writ petition came to be filed. This writ petition was listed before me for admission on 28.09.2020 and the learned Standing counsel took notice for the respondents. The matter was directed to be called on 01.10.2020 (ie.) today.

5. I wanted the learned Standing counsel to get instructions as to whether any appeal has been filed questioning the appellate authority's order dated 18.02.2020 and if so, any interim order has been obtained. Today when the matter was taken up for hearing, the learned Standing counsel submitted that he has not obtained any written instruction from the respondents herein. However, the oral instructions given to him was that an appeal has been preferred before the CESTAT on 12.05.2020. He does not have any specific information as to whether the appeal has been numbered or not. But the position is that no interim order of stay has been produced before this Court.

6. At this stage, the learned counsel appearing for the petitioner drew my attention to Circular bearing No.276/186/2015-CX.8A dated 01.06.2015 issued by the Government of India. It reads as follows:-

"**Circular: 276/186/2015-CX.8A dated 01-Jun-2015**

Refund/Rebate claim arising out of order of Commissioner/Commissioner (Appeals) not to be withheld unless stay order has been obtained.

C.B.E. & C. Instruction F. No. 276/186/2015-CX.8A, dated 1-6-2015

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Proposal to file Special Leave Petition (SLP) against Order dated 11-3-2015 of the Hon'ble High Court of Karnataka in

Writ Appeal No. 2769/2013 filed by M/s. Madura Coats Pvt. Ltd, Bengaluru [2015 (39) S.T.R. 188 (Kar.)] - Regarding.

I am directed to refer to your SLP proposal C.No. IV/03/249/2013/ Legal ST II, dated 17-4-2015 and Chief Commissioner, Central Excise and Service Tax, Bengaluru Zone letter dated 7-5-2015 on the above subject.

2. The matter has been examined in the Board. Board has decided that this case does not deserve filing of SLP. The order dated 11-3-2015 of the Hon'ble High Court should be implemented forthwith. In this regard, I am further directed to invite your attention to para (3) of Circular No. 572/9/2001-CX, dated 22-2-2001 [2001 (129) E.L.T. (T7)] regarding disposal of refund/rebate claims where application is pending at appellate level, which provides as under :-

(3) The cases where refund arises due to order of Commissioner (Appeals) or Commissioner of Central Excise/Customs and decision is taken to contest them before CEGAT.

In such cases appeal/stay application should be filed expeditiously well before the expiry of stipulated period of three months (and not waiting for the last date of filing of appeal). *However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order diving the relief, unless stay order has been obtained.* It would be the responsibility of the concerned Commissioner to obtain stay order expeditiously where the orders passed by Commissioner (Appeals) suffer from serious infirmities and it involves grant of heavy refunds.

(Emphasis supplied)

3. The refund etc. allowed in such cases would be subject to the outcome of the appeal.

4. You are accordingly directed that Board's Instruction on refund, which are self-contained and unambiguous should be followed meticulously.

This issues with the approval of Chairman (EC)."

7. As rightly pointed out by the learned counsel appearing for the petitioner, if no interim order has been obtained by the department within a specified period, refund has to be allowed and of course the same will be subject to the outcome of the appeal. In the case on hand, the appellate authority passed the order dated 18.02.2020. We are now on 01.10.2020. More than seven full months have elapsed in the meanwhile. If the department was aggrieved, the department should have expeditiously filed an appeal and pursued the matter and obtained interim order. The petitioner cannot be made to wait indefinitely. The department cannot take its own sweet time to file the appeal and pursue the same. The department ought to have acted expeditiously in the matter.

8. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner is afterall asking for his money in terms of the circular issued by the Government of India. I therefore direct the respondents herein to implement the Order-in-Appeal dated 18.02.2020 and disburse the refund due to the petitioner at the applicable rates of interest. This refund shall be made within a period of four weeks from the date of receipt of a copy of this order.

9. This writ petition stands allowed. No costs.

Sd/-
Assistant Registrar (AD-II)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Assistant Commissioner of Customs,
   Customs House, Tuticorin - 628 001.

2. The Commissioner of Customs,
   Customs House,
   Tuticorin - 628 001.

+1 CC to M/s.B. VIJAY KARTHIKEYAN, Advocate (SR-18863[F] dated 05/10/2020)

+1 CC to M/s.Y. PRAKASH, Advocate (SR-18870[F] dated 05/10/2020)

W.P.(MD)No.12969 of 2020
01.10.2020

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SDS (09.10.2020) 4P-5C