BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.10.2020**

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).No.14196 of 2014

M/s Sri Abhisek India,
Rep. by its Proprietor Mr.Ramdev Purba,
2/800 U, 1st Floor, Shanmuga Nagar,
S.N.Puram Road,
Sivakasi 626 124 .. Petitioner

Vs.

1) The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin 628 004

2) The Commissioner of Customs and
Central Excise (Appeals),
No.1, Williams Road, Cantonment,
Trichy – 620 001

3) The Assistant Commissioner of Customs (Refunds),
Custom House, New Harbour Estate,
Tuticorin 628 004 .. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Mandamus directing the respondents herein to refund the amount of Rs.3,07,141/- claimed by the petitioner herein vide an application dated 11.02.2014 by giving effect to the order passed by the Commissioner of Customs and Central Excise (Appeals), Trichy vide Order-in-Appeal No.221/2013 (TTN) in Appeal No.C24/41/2013-TTN(CUS), dated 20.12.2013.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : No Appearance

O R D E R

This writ petition has been filed for a Mandamus seeking for a direction to the respondents to refund the amount of Rs.3,07,141/- claimed by the petitioner vide an application dated 11.02.2014 by giving effect to the order passed by the Commissioner of Customs and Central Excise (Appeals), Trichy vide Order-in-Appeal No.221/2013 (TTN) in Appeal No.C24/41/2013-TTN(CUS), dated 20.12.2013.

2. Heard Mr.A.K.Jayaraj, learned counsel appearing for the petitioner and there is no appearance for the respondents.

3. It is the case of the petitioner that after succeeding in the appeal in Appeal No.221/2013 (TTN) in Appeal No.C24/41/2013-

TTN(CUS) before the second respondent, the petitioner had sought for refund of excess duty paid by them, through their refund application dated 11.02.2014. By the response dated 10.03.2014, the third respondent has intimated the petitioner that the department proposes to file an appeal against the order in Appeal No.221/2013 (TTN), dated 20.12.2013 and therefore, the petitioner will have to await for the outcome of the proposed appeal to be filed before the CESTAT for the processing of the petitioner's refund application. Till date, no counter affidavit has been filed by the respondents.

4. The learned counsel for the petitioner would submit that, to the knowledge of the petitioner, till date, no appeal has been preferred by the respondents, aggrieved by the order in Appeal No.221/2013 (TTN), dated 20.12.2013. After considering the submissions made by the learned counsel for the petitioner and after perusing and examining the order, dated 20.12.2013 passed by the second respondent, this Court is of the considered view that no useful purpose would be served if this writ petition is kept pending.

5. Instead, a direction can be issued to the third respondent to process and settle the refund application, dated 11.02.2014 submitted by the petitioner seeking for refund of a sum of Rs.3,07,141/- which is the alleged excess duty paid by the petitioner to the respondents, which they are now entitled to refund, as the said excess duty collection made by the respondents under the demand has been set aside by the second respondent under the order in Appeal No.221/2013 (TTN) dated 20.12.2013.

6. Accordingly, this Court directs the third respondent to consider the refund application of the petitioner, dated 11.02.2014 seeking for the refund of excess duty paid by them within a period of four weeks from the date of receipt of a copy of this order and pass final orders on merits and in accordance with law.

7. However, it is made clear that if any stay has been granted against the petitioner by any appellate forum/ Court, the same shall be disclosed in the final orders passed by the third respondent, pursuant to the directions given by this Court.

8.Accordingly, this writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

scs

To

1) The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin 628 004

2) The Commissioner of Customs and
Central Excise (Appeals),
No.1, Williams Road, Cantonment,
Trichy – 620 001

3) The Assistant Commissioner of Customs (Refunds),
Custom House, New Harbour Estate,
Tuticorin 628 004

+1 CC to M/s.A.K. JAYARAJ, Advocate (SR-20082[F] dated 14/10/2020)

Order made in
W.P(MD).No.14196 of 2014
Dated:
12.10.2020

CK(CO)
AP(04/11/2020) 3P 5C