**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.206

**CWP No.8451 of 2020 (O&M)
Date of Decision : 10.7.2020**

M/s Vishal Steel & Metal Company
...... Petitioner

Versus

Commissioner of Customs and another ...... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

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Present : Mr. Saurabh Kapoor, Advocate
for the petitioner.

Mr. T.K.Joshi, Sr. Standing counsel
for the respondents.

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AJAY TEWARI, J. (ORAL)

1. This petition has been filed seeking directions to the respondent No.2 to issue refund claim of Rs. 4,09919/- as allowed by order in Appeal No. LUD-CUS-001-APP-2142-2144-19 dated 27.2.2019.

2. In view of the fact that the appeal of the petitioner was allowed by the appellate authority as far back as on 22.2.2019, the precise grievance is that despite the lapse of more than one year and four months the refund has not been credited. Written statement has been filed accepting these factual assertions. It is, however, stated that in view of the decision of the Supreme Court in the case of *"M/s Sahkari Khand Udyog Mandal vs. Commissioner of Central Excise and Customs 2005 (481)ELT 328 (SC)"* it was incumbent upon the petitioner to have submitted a certificate from the Chartered Accountant to the fact that amount paid has not been passed on to the customer and the same is outstanding in the books of accounts as

receivable.

3. Learned counsel for the petitioner contends that in fact this issue has been crystallized by the Deputy Commissioner of Customs in the order dated 15.6.2015/18.6.2015. We find that he has recorded as follows :-

> *"The importer has submitted a certificate from the statutory Auditor/Chartered Accountant that the express duty claimed has not been passed on to the buyer and thus clause of unjust enrichment does not apply in the instant case."*

4. It is not denied in the written statement that this statement of fact is incorrect. In the circumstances, this plea and the second plea that refund application has not been filed also cannot be accepted since even after notice of motion was issued the refund has not been made.

5. In our opinion, there was no justification for the same. In the circumstances, the petition is allowed and respondent No.2 is directed to refund the amount as per the appellate order within one month from the date of receipt of certified copy of this order with applicable interest.

6. Since the main case has been decided, the pending C.M. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

July 10, 2020
anuradha

Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No