



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	16.02.2021
Pronounced On	11.06.2021

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P. No.13597 of 2013

M/s.REIL Electricals India Limited,
Represented by its Company Secretary,
Thondamanatham Village,
Villianur Commune,
Puducherry - 605 002.

... Petitioner

-vs-

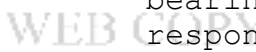
1. Joint Secretary (Revisionary Authority)
Government of India,
Ministry of Finance,
Department of Revenue,
14, HUDCO Vishala Building,
B-Wing, 6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.
2. Assistant Commissioner of Central Excise,
II Division, 14, Municipal Street,
Ajees Nagar, Pondicherry - 605 010.
3. Commissioner of Central Excise (Appeals),
26/1, Mahatma Gandhi Road,
Chennai - 600 034.
4. Commissioner of Central Excise,
Beach Road, Pondicherry- 605 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the order passed by the 1st respondent vide Order No.83-89/2013-CX dated 29.01.2013, quash the same.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.V.Sundareswaran



ORDER

In this writ petition, the impugned order dated 29.01.2013 bearing reference Order No.83-89/2013-CX passed by the first respondent/Joint Secretary has been questioned. The said order has been passed by the first respondent/Joint Secretary under section 35 EE of the Central Excise Act, 1944.

2. By the impugned order the first respondent/Joint Secretary has affirmed the Order-in-Appeal Nos.108 to 114 of 2011 dated 28.03.2011 passed by the third respondent/Commissioner of Central Excise (Appeals) rejecting the petitioner's appeal against Order-in-Original No.42 of 2009 dated 31.08.2009.

3. By these orders, the respondents have rejected partially rebate claim to an extent of Rs.87,69,879/- by allowing rebate claim for a sum of Rs.36,16,398/- out of total to be claimed for a sum of Rs.1,23,86,277/-.

4. Heard learned counsel for the petitioner and the respondents. Facts are not in dispute. During the period between July 2008 to January 2009, the petitioner had made fraudulent credit of Rs.86,73,376/- in its CENVAT account and thereby debited the aforesaid sum as excise duty on the goods exported during the aforesaid period and thereafter filed seven rebate claims for a total sum of Rs.1,23,86,277/- when indeed the petitioner had only a actual CENVAT credit of Rs.12,73,308/-. The balance amount of Rs.24,39,593/- appears to have been debited from the Personal Ledger Account of the petitioner.

5. However, this mistake was detected by the Superintendent of Central Excise and a letter dated 10.11.2008 was issued to the petitioner to explain the basis for availing the fraudulent CENVAT credit. The petitioner thereafter squared up the liability and paid the interest thereon on 02.02.2009 by paying an amount of Rs.86,75,640/- being the fraudulent entry made in the CENVAT account and interest thereon for a sum of Rs.3,18,191/-.

6. The petitioner thereafter filed seven rebate claims for a sum of Rs.1,23,86,277/- for the exports made during the aforesaid period during May 2009, June 2009 and July 2009 as detailed below:-



Sl. No.	Date of filing the rebate claim	Amount of rebate claimed	Dates of Export
1	18.05.2009	23,84,364	33 ARE-I in July,08
2	25.05.2009	12,62,077	14 ARE-I in Aug,08
3	05.06.2009	21,39,026	24 ARE-I in Sep,08
4	16.06.2009	9,97,075	10 ARE-I in the month of Oct,08
5	07.07.2009	28,19,011	23 ARE-I in the month of Nov,08
6	10.07.2009	18,02,457	28 ARE-I in the month of Aug,08 & Dec, 08
7	20.07.2009	9,82,267	18 ARE-I in the month of Jan,09
		1,23,86,277	

7. Under these circumstances, a Show Cause Notice No.28 of 2009 dated 03.08.2009 was issued to the petitioner by the fourth respondent/Commissioner of Central Excise. The said Show Cause Notice was issued to show cause as to why a sum of Rs.86,75,640/-as detailed in Annexure-I should not be demanded under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944.

8. The Show Cause Notice also called upon the petitioner to show cause as to why the amount paid by the petitioner on 02.02.2009 should not be appropriated. The notice also separately called upon the petitioner to show cause as to why an amount of Rs.12,07,057/- has indicated in Annexure-II to the said Show Cause Notice should not be demanded under the aforesaid rules and why interest also should not be demanded.

9. The Show Cause Notice also contain a proposal as to why penalty should not be imposed on the petitioner and its directors under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

10. With a view to settle the dispute with the respondent/Central Excise Department, the petitioner approached



the Settlement Commission on 12.11.2009. The Settlement Commission also settled the case of the petitioner by its order dated 27.09.2010 by accepting the case of the petitioner that the credit was wrongly taken by one of their Company Secretary named B.Gnanasekaran who had since resigned from the petitioner's company.

11. During the interregnum, the seven rebate claims were adjudicated by the second respondent/Assistant Commissioner of Central Excise. The second respondent rejected the rebate claims filed by the petitioner vide Order-in-Original No.42 of 2009 on 31.08.2009 on the ground that the exports were made without payment of corresponding duty as there was no CENVAT credit for a sum of Rs.86,75,640/- and wrong availing of credit of Rs.12,07,057/-.

12. The further appeal before the third respondent/Commissioner of Central Excise (Appeals) was also dismissed vide Order-in-Appeal No.108-114/2011(P) and in this background, the petitioner approached the first respondent/Joint Secretary under section 35EE of the Central Excise Act, 1944 which culminated in the impugned order dated 29.01.2013 bearing reference Order No. 83-89/2013-CX.

13. It is noticed that the first respondent/Joint Secretary has allowed claim for a sum of Rs.36,16,398/- from the total rebate claim of Rs.1,23,86,277/- covered by seven different rebate claims filed by the petitioner as detailed above. The fact that they were claim to an extent of Rs.36,16,398/- has been allowed indicates that to an extent of Rs.12,73,308/- and an amount of Rs.24,39,593/- was correctly debited from the said CENVAT account and the Personal Ledger Account respectively.

14. The facts also indicate that before the refund claims were made, the petitioner has also paid the aforesaid sum of Rs.86,75,640/- together with interest thereon amounting to Rs.3,18,191/- on 02.02.2009. There is also no dispute that the petitioner had exported the goods. The respondents have also not denied the fact that the petitioner had indeed exported the goods and exports proceeds have been received by the petitioner.

15. The fact that the petitioner was entitled to export goods under the payment of duty under bond under Rule 19 of the Central Excise Rules, 2002 and the refund of CENVAT under Rule 5 of the CENVAT Credit Rules, 2004 is not in dispute.



16. The petitioner unnecessarily made it seem as if the exports were against payment of duty by debiting CENVAT for an amount of Rs.86,73,376/- when indeed the balance in the said account was only Rs.12,73,308/-.

17. The fact remains that the petitioner has squared duty liability together with interest thereon even before the rebate claims were filed during May, June and July 2009 on the exports made between July 2008 and January 2009 and thus regularized the mistakes committed by it.

18. Even if the petitioner was not entitled to rebate, the petitioner would have been entitled to exclude such goods under bond under Rule 19 of the Central Excise Rules, 2002. The issue is Revenue Neutral. Though, the conduct of the petitioner was no forthright and was intended to defraud the revenue, fact remains that the petitioner has paid back and compensated the revenue by paying the amount to the credit of the Central Government together with interest on 02.02.2009.

19. The exports are not to be burdened with tax liability. The petitioner was not entitled for rebate, the alternative benefit of export under bond without payment of duty under Rule 19 of the Central Excise Rules, 2002 cannot be denied to the petitioner.

20. Considering the fact that the petitioner has squared up the liability and exported the goods and also has received exports proceeds, the impugned orders rejecting the rebate claims cannot be sustained. Penalty for the wrongdoing was the subject matter of the order of the Settlement Commission dated 27.09.2010. It brings curtain down, as far as the wrongdoing is concerned. The settlement commission has not only accepted the case of the petitioner but also awarded a minor penalty of Rs.10,000/-. Thus, there is no scope for denying the refund of the amount which was wrongly debited in advance and paid by the petitioner as was pointed out by the Superintendent of Central Excise vide letter dated 10.11.2008. The petitioner took about three months to pay the amount together with interest. That being the case of irregularities committed by the petitioner stands wiped out. It has to be assumed that the goods were exported under Rule 18 of Central Excise Rules, 2004 in the light of the subsequent payment of duty and interest. There is no loss to the revenue as exports are always revenue neutral.



21. The second respondent/Assistant Commissioner of Central Excise is therefore directed to refund the balance rebate claim together with interest thereon in accordance with law within a period of three months from date of receipt of this order. The present writ petition is thus allowed with the above observation. No cost.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. Joint Secretary (Revisionary Authority)
Government of India,
Ministry of Finance,
Department of Revenue,
14, HUDCO Vishala Building,
B-Wing, 6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.
2. Assistant Commissioner of Central Excise,
II Division, 14, Municipal Street,
Ajees Nagar, Pondicherry - 605 010.
3. Commissioner of Central Excise (Appeals),
26/1, Mahatma Gandhi Road,
Chennai - 600 034.
4. Commissioner of Central Excise,
Beach Road, Pondicherry- 605 001.

+1cc to Mr.Lakshmi Kumaran, Advocate, S.R.No.27741

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.27743

Order in
W.P. No.13597 of 2013

RK(CO)
RLP(23/07/2021)