IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.08.2021
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.4480 of 2009
and
M.P.No.1 of 2009

M/s. Caplin Point Laboratories Ltd.,
(Formerly M/s. May (India) Laboratories Pvt. Ltd.,)
No.3, Lakshmanan Street,
T. Nagar, Chennai - 600 017. ...Petitioner

Vs

1. The Joint Secretary (Revision Application),
   Department of Revenue,
   Ministry of Finance,
   Government of India,
   New Delhi.

2. The Commissioner of Central Excise (Appeals),
   Central Excise Office Complex,
   Mahatma Gandhi Salai,
   Nungambakkam,
   Chennai - 600 034.

3. The Asst. Commissioner of Central Excise (Division-IV),
   O/o. The Commissioner of Central Excise II,
   MHU Complex,
   Anna Salai,
   Nandanam, Chennai - 600 035. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent made in Order No.5 of 2008, dated 31.07.2008, and quash the same consequently direct the respondents to grant rebate on the Terminal Central Excise Duty paid on the Final Export Products exported by the petitioner during February 2005 to May 2005.

For Petitioner : Mr.P.R.Ranganath
for Mr.S.Sankara Vadivelu

For Respondents: Mr.K.Mohanamurali
Senior Standing Counsel
for R1 & R2

ORDER

The order passed by the first respondent in Order No.5 of 2008, dated 31.07.2008, is under challenge in the present Writ Petition.

2. The petitioner has filed the Revision Application challenging the Order in Appeal, dated 31.07.2006 with respect to Order-in-Original (Rebate/Refund) No.16 of 2005, dated 21.09.2005. The preliminary issue raised on behalf of the petitioner is that the Joint Secretary to the Government of India, who passed the impugned order lacks jurisdiction as the cadre of the Joint Secretary is equivalent to the cadre of the Commissioner of Police and therefore, the Joint Secretary is incompetent to entertain the Revision Application and pass orders. Therefore, the first respondent in the Writ Petition has passed orders without jurisdiction and therefore, the matter is to be remanded back to the Authorities. The learned counsel for the petitioner made a submission that on merits also, the petitioner has a good case and an adjudication is required.

3. This Court is of the considered opinion that once the Court accepted the legal grounds that the Authority, who issued an order has no jurisdiction to issue such an order, then all other merits are to be adjudicated by the Competent Authority and High Court need not adjudicate the merits in such circumstances. The merits involved are also to be adjudicated before the Competent Authority in the manner to law.

4. This being the factum established, the order impugned passed by the first respondent in Order No.5 of 2008, dated 31.07.2008, is quashed and the matter is remanded back to the Competent Authority, who has to hear the matter on merits and in accordance with law and by affording opportunity to the petitioner and dispose of the same, within a period of six weeks from the date of receipt of a copy of this order.

5. With these directions, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Pns/Kbs

To

1. The Joint Secretary (Revision Application),
   Department of Revenue,
   Ministry of Finance,
   Government of India,
   New Delhi.

2. The Commissioner of Central Excise (Appeals),
   Central Excise Office Complex,
   Mahatma Gandhi Salai,
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   MHU Complex,
   Anna Salai,
   Nandanam, Chennai - 600 035.

+1cc to Mr.Sankaravadivelu, Advocate, S.R.No.41917

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.42114

W.P.No.4480 of 2009

PMK(CO)
RGA(24/09/2021)