IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27392 of 2012

M/s.Hatsun Agro Products Limited
Attur Main Road, Karumapuram, Salem - 636 106,
Represented by its Chief Financial Officer,
Mr.S.Subramanian ... Petitioner

Vs.

1. The Joint Secretary to Government of India,
(Review Application), Ministry of Finance,
Department of Revenue,
Government of India, No.14, HUDCO,
Vishala Building, B Wing, 6th Floor,
Bhikaji Cama Place, New Delhi - 110 066.

2. The Commissioner of Central Excise (Appeals)
No.1, Foulks Compound, Anaiamedu,
Salem - 636 001.

3. The Assistant Commissioner of Central Excise,
Salem I Division, Veerapandiar Nagar,
New Bus Stand (West),
Salem - 636 004. ... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent made in Order No.725-731/2012-C.X dated 29.06.2012, in F.No.195/895-901/10-RA, quash the same.

For Petitioner : Mr.B.Satish Sundar

For Respondents 2 & 3 : Mr.V.Sundareshwaran
Senior Panel Counsel

ORDER

Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mr.V.Sundareshwaran, learned Senior Panel Counsel for the respondents 2 and 3 and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in Order No.725-731/2012-Cx dated 29.06.2012 passed by the first respondent rejecting the revision application filed by the petitioner under Section 35 EE of the Central Excise Act, 1944 (hereinafter referred to as the 'Act' for short) preferred against the Order-In-Appeal No.54/2010-CE SLM dated 23.09.2010 and 55-60/ 2010(CE) SLM dated 27.09.2010 passed by the Commissioner of Central Excise (Appeal), Salem.

3. The learned counsel for the petitioner has brought to notice of this Court that the impugned order has been passed by the Joint Secretary (Revision Application), Government of India, who was also in the same rank of Commissioner of Central Excise and Customs, who had passed the Order-In-Appeal which had been challenged before him in that revision application, which is impermissible in law. He has also placed reliance on the decision of this Court in S.Moinuddin -vs- Joint Secretary, Government of India, Ministry of Finance, New Delhi (dated 24.01.2017 in W.P. No. 16682 of 2016), where this Court has interfered with the order that had been impugned therein in respect of similarly placed persons on that sole ground and had directed the matter to be heard by an authority after taking corrective measures in that regard. The learned Senior Panel Counsel appearing for respondents 2 & 3, on instructions, states that subsequently, the Revisional Authority has been re-constituted, taking note of the anomaly pointed out by this Court.

4. Having regard to the aforesaid submissions made, the impugned order is quashed and the matter is remitted to the present Revisional Authority under Section 129 DD of the Act for fresh consideration of the matter. It shall be incumbent upon the Revisional Authority, after affording full opportunity of hearing to the petitioner, deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law, inhibited and uninfluenced by the impugned order which has been set aside and communicate the decision taken to the petitioner.

5. In fine, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy//

Sub Assistant Registrar

Sgl

To

1. The Joint Secretary to Government of India,
   (Review Application), Ministry of Finance,
   Department of Revenue,
   Government of India, No.14, HUDCO,
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   Salem - 636 004.

+2ccs to Mr.B.Sathishsundar, Advocate, S.R.No.38688

W.P.No.27392 of 2012

SR(CO)
SU(23/08/2021)