IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7664 & 7665 of 2018

M/s.Jayavarma Textiles Private Limited,
SF No.175, Kurichipudur,
Kurichi – 638 103.
(Represented by V.Palanisamy,
Managing Director) ... Petitioner in both W.Ps.

-vs-

1.The Assistant Commissioner of CGST
and Central Excise,
Erode I Division, Bharathi Nagar,
Erode-638004.

2.The Commissioner of CGST and
Central Excise,
No.1, Foulks Compound, Anai Road,
Salem – 636 001.

3.The Commissioner of CGST and
Central Excise [Appeals] Coimbatore,
Circuit Office @ Salem Commissionerate,
No.1, Foulks Compound, Anai Road,
Salem – 636 001. ... Respondents in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in Sl.No:1/2018-(R-Cex)-AC/Erode-I and Sl.No:2/2018-(R-Cex)-AC/Erode-I respectively dated 01.03.2018 and quashing the same and consequently, direct the first respondent to pass an appropriate order in accordance with law without relying on the judgment in W.P.No.1226/2016 dated 19.02.2016 [M/s.Raghav Industries Ltd.].

For Petitioner : Ms.D.Naveena
(In both W.Ps.)

For Respondents : Ms.Lydia
(In both W.Ps.) for Mr.Rajnish Pathiyil

COMMON ORDER

The orders in original dated 01.03.2018 passed by the Assistant Commissioner, the first respondent is under challenge in the present writ petitions.

2.The petitioner is the manufacturer of cotton yarn and exporting the same on payment of duty through capital goods cenvat credit. No credit is availed on the inputs and input services. Subsequently, the duty paid through capital goods, credit was claimed as cash rebate in terms of Rule 18 of Central Excise Rules, 2002 read with Notification 19/2004-CE(NT) dated 06.09.2004.

3.The learned counsel for the petitioner mainly contended that the first respondent has formed an opinion referring the Board's Circular No.42/2011 -Cus dated 22.09.2011 and made the following observations:

> “The Board's Circular No.42/2011-Cus dated 22.09.2011 (Para 8) and circular No.1047/35/2016-CX dated 16.09.2016 (para 5) clarifies about the admissibility of rebate in cases were inputs or input services used in the manufacture of the export product and not about capital goods credit. In this case, the claimant has not taken credit on capital goods and has paid the duty on the exported goods through their capital goods Cenvat credit account and also availed higher rate of customs duty drawback. The issue has been clarified in the Board's Circular No.42/2011-Cus dated 22.09.2011 in Para 8. Based on the above clarifications issued by CBEC, I find the assessee is eligible for the duty paid on export through their Cenvat Credit (capital goods) account as refund/rebate.”

4.However, the Hon'ble High Court, Madras in its Order on W.P.No.1226 of 2016 dated 19.02.2016 passed in respect of M/s.Raghav Industries Limited, Tiruchengode vs. Union of India and others and observed as follows:

> “....... While sanctioning rebate, the export goods, being one and the same, the benefits availed by the petitioners on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs,

Central Excise Duties and Service Tax Drawback Rules 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the petitioners had availed duty drawback of Customs, Central Excise and Service Tax on 10 the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit.

As per the proviso to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules 1995, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or of the Finance Act, 1994 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained.

.... In the case on hand, the benefits claimed by the petitioners are covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise Rules, 2002. Since the issue, inivolved in the present writ petition, is covered under two different statutes, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.

As per the proviso to Rule 3 of the Central Excise Duties and Service Tax Drawback Rules 1995, the petitioner is not entitled to claim both the rebates.

In these circumstances, the respondents have righly rejected the claim made by the petitioners.

I do not find any error in the order passed by the respondents and the writ petition is liable to be dismissed. Accordingly, the same is dismissed."

5.The learned counsel for the petitioner made a submission that the said judgment of the learned Single Bench was taken by way of an appeal before the Hon'ble Division Bench and the writ appeal is pending.

6.This Court is of the considered opinion that the pendency of an appeal before the Hon'ble Division of the High Court of Madras is not a bar for the appellant to prefer an appeal under the statute by following the procedures contemplated. If at all the benefit is conferred by the Hon'ble Division Bench or the matter is further taken before the Hon'ble Supreme Court, all such things cannot be a ground to keep the writ petition pending for an indefinite period. As of now, the claim set out by the petitioner was rejected by the High Court of Madras in W.P.No.1226 of 2016 despite the fact that the first respondent is in favour of the petitioner. All these aspects are to be considered as and when the points are considered either by the Department or by the Courts in an appropriate proceedings.

7.As far as the order impugned in the present writ petition is concerned, it is an original order and the introductory paragraph of the order impugned itself reveals that "any person deeming himself aggrieved by this order may appeal against the same to the Commissioner of Central Excise (Appeals), Foulks Compound, Anai Road, Salem-636001". The procedures to be followed are also enumerated in the order. Therefore, the petitioner has to exhaust the statutory remedy provided under the Act.

8.Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. Undoubtedly, writ proceedings may be entertained before exhausting the appellate remedy. However, it is to be ensured that there is an imminent threat or gross injustice warranting urgent relief to be granted. Mere violation of principles of natural justice is insufficient to entertain a writ proceedings under Article 226 of the Constitution of India, as every Writ Petition is filed based on one or the other ground stating that the principles of natural justice is violated or statutory requirements are not complied with or there is an illegality or otherwise. Thus, dispensing with an appellate remedy is to be granted cautiously in view of the fact that the very purpose and object of legislation providing an appellate remedy cannot be diluted nor the benefit be denied to the aggrieved person to exhaust the same. The statutory appellate authorities are the final fact finding authorities. Thus, the finding to be made by such appellate authorities with reference to the documents and evidences are of paramount importance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India.

9.The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority by following the procedures as contemplated, but not the decision itself. Therefore, the routine entertainment of a Writ Petition by dispensing with appellate remedy is not preferable and such an exercise would cause injury to the institutional hierarchy and the importance attached to such appellate institutions. The appellate institutions provided under the statute at no circumstances be undermined by the higher Courts. The appellate forums are the final fact finding authorities and more so, possessing expertise in a particular field. Thus, the finding of such appellate forums would be a valuable assistance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India. The High Court cannot conduct a roving enquiry with reference to the facts and circumstances based on the documents and evidences. Based on the mere affidavits filed by the litigants, the disputed facts cannot be concluded. Thus, the importance of fact finding by the appellate forums is of more value for the purpose of providing complete justice to the parties approaching the Court of law.

10.The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

11.In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal under the provisions of the Act in the prescribed format and by complying with the provisions of the Act and Rules. In the event of filing of an appeal, the Appellate Authority is bound to consider the same, pass orders on merits and in accordance with law and by affording an opportunity to the writ petitioner as expeditiously as possible.

12.With these directions, both the Writ Petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Assistant Commissioner of CGST
and Central Excise,
Erode I Division, Bharathi Nagar,
Erode-638004.

2.The Commissioner of CGST and
Central Excise,
No.1, Foulks Compound, Anai Road,
Salem - 636 001.

3.The Commissioner of CGST and
Central Excise [Appeals] Coimbatore,
Circuit Office @ Salem Commissionerate,
No.1, Foulks Compound, Anai Road,
Salem - 636 001.

+2cc to M/s.D.Naveena, Advocate Sr.34670, 34671

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gpl[co]
srg 18/08/2021