IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.34063 to 34065 of 2015

M/s.Kone Elevator India Pvt. Ltd.,
Rep., by Mr.C.V.S.Krishnakumar,
Director - Corporate Affairs,
50, Vanagaram Road,
Ayanambakkam, Chennai-600 095. .. Petitioner in all W.Ps.

-vs-

1. Director General of Foreign Trade,
   Udyog Bhavan,
   New Delhi.

2. Additional Director General of Foreign Trade,
   Shastri Bhavan, Haddows Road,
   Nungambakkam, Chennai-600 034.

3. Assistant Director General of Foreign trade,
   Shastri Bhavan, Haddows Road,
   Nungambakkam, Chennai-600 034. .. Respondents in all W.Ps.

Prayer in W.P.No.34063 of 2015 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to call for the records of the 2nd respondent culminating in the rejection of the claim through letter dated 17.07.2013 issued from file No.04/41/83/24/AM14/150 and quash the same directing the respondents to re-consider the application dated 10.07.2013 on merits and sanction the refund in accordance with law.

Prayer in W.P.No.34064 of 2015 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to call for the records of the 2nd respondent culminating in the rejection of the claim through letter dated 31.10.2013 issued from file No.04/41/83/21/AM10 and quash the same directing the respondents to re-consider the application dated 18.05.2009 on merits and sanction the refund in accordance with law.

Prayer in W.P.No.34065 of 2015 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of

Mandamus to call for the records of the 2nd respondent culminating in the rejection of the claim through letter dated 26.09.2013 and re-affirmed in letter dated 25.11.2013, both issued from file No.04/41/83/37/AM14/233 and quash the same directing the respondents to re-consider the application dated 16.09.2013 on merits and sanction the refund in accordance with law.

For Petitioner in all WPs : Mr.S.Murugappan

For Respondents in all WPs : Mr.J.Madanagopal Rao, Sr. Central Govt. Standing Counsel

COMMON ORDER

The orders passed by the second respondent culminating in rejection of the claim through letters dated 17.07.2013, 31.10.2013 and 26.09.2013, which was re-affirmed on 25.11.2013 are sought to be quashed in the present writ petitions.

2.The petitioner is engaged in the manufacture of lifts, elevators and components and install them at customers' place. The petitioner-company manufactures all these products and supplies the same to various parts in India and abroad. The facts regarding the transactions are not disputed seriously by either of the parties. The sole ground raised by the petitioner is that the impugned orders have been passed based on the amended paragraph 8.3(c) of the Foreign Trade Policy 2009-2014. In exercise of the powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, read with paragraph 1.3 of the Foreign Trade Policy, 2009-2014, the Central Government made amendments in the Foreign Trade Policy 2009-2014 on 18.04.2013. Accordingly, paragraph 8.3(c) was amended through Notification No.4(RE-2013)/2009-2014 dated 18th April, 2013. The existing paragraph 8.3(c) and the amended paragraph 8.3(c) with effect from 18th April, 2013 read as under:-

> "(i) Existing Paragraph 8.3(c)
>
> Exception from terminal excise duty where supplies are made against ICB. In other cases, refund of terminal excise duty will be given. Exemption from TED shall also be available for supplies made by an Advance Authorisation holder to a manufacturer holding another Advance Authorisation if such manufacturer, in turn, supplies the product(s) to an ultimate exporters.

Amended Paragraph 8.3(c)

Refund of terminal excise duty will be given if exemption is not available. Exemption from TED is available to the following categories of supplies:

(i) Supplies against ICB;

(ii) Supplies of intermediate goods, against invalidation letter, made by an Advance Authorisation holder to another Advance Authorisation holder; and

(iii) Supplies of goods by DTA unit to EOU / EHTP / STP / BTP unit.

Thus, such categories of supply which are exempt ab initio will not be eligible to receive refund of TED."

3.Relying on the said amendment, the learned counsel for the petitioner reiterated that all the transactions made by the petitioner fall before the date of amendment and therefore, the pre-amended paragraph 8.3(c) is to be applied for the purpose of considering the case of the writ petitioner. However, the second respondent erroneously applied the amended paragraph 8.3 (c) of the Foreign Trade Policy 2009-2014 and issued the impugned orders. This being the ground raised, this Court is of the considered opinion that the case is to be remanded back for fresh consideration with reference to the application of pre-amended and amended paragraphs of the Foreign Trade Policy 2009-2014.

4.The petitioner is of an opinion that their case is to be considered by applying the pre-amended paragraph 8.3(3) and accordingly, appropriate orders are to be passed. This being the factum established, the impugned orders passed by the second respondent in proceedings dated 17.07.2013, 31.10.2013 and 26.09.2013, which was re-affirmed on 25.11.2013 are set aside and the matter is remanded back to the second respondent for fresh consideration. The second respondent is directed to consider the facts and circumstances with reference to the applications and documents filed by the petitioner and accordingly, take a decision and pass orders as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. If any request is made by the petitioner for personal hearing, the same may be provided and the petitioner is directed to submit the copies of the applications and documents along with the order passed in these writ petitions within a period of two weeks from the date of receipt of a copy of this order.

5.With the above observations and directions, these writ petitions are allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. Director General of Foreign Trade,
   Udyog Bhavan,
   New Delhi.

2. Additional Director General of Foreign Trade,
   Shastri Bhavan, Haddows Road,
   Nungambakkam, Chennai-600 034.

3. Assistant Director General of Foreign trade,
   Shastri Bhavan, Haddows Road,
   Nungambakkam, Chennai-600 034.

+1cc to Mr.S.Murugappan , Advocate, S.R.No.28893

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PL(CO)
PM(23/07/2021)