

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.03.2021
Pronounced On	16.03.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.24269 & 22385 to 22388 of 2016

(Through Video Conferencing)

M/s.Kaamdaa Impex,
No.106, Audiappa Naicken Street,
Sowcarpet, Chennai - 600 079,
Represented by its Proprietor
Shri Jitendrakumar ...Petitioner in
W.P.Nos.24269,22385

M/s.M.M.Enterprises,
No.106, Audiappa Naicken Street,
Sowcarpet, Chennai - 600 079,
Represented by its Proprietrix
Smt. Punidevi ...Petitioner in
W.P.Nos.22387 &
22388 of 2016

Vs.

1.The Commissioner of Customs
(Appeals - II), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2.The Assistant Commissioner of Customs,
(Refunds - Sea), Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

...Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records 1st respondent, leading to issuance of Order-in-Appeal in C.Cus.-II Nos.252 to 254/2016 dated 09.03.2016 and Order-in-Appeal in C.Cus.-II Nos.255 to 256/2016 dated 09.03.2016 respectively, and quash the same, and further direct the 2nd respondent to consider the refund claim filed by the petitioner without considering the limitation.

For Petitioner : Mr.N.Viswanathan in all W.Ps.

For Respondents: Mr.Rajnish Pathiyil, SCGSC,
in all W.Ps.

C O M M O N O R D E R

By this common order, all the five Writ Petitions are being disposed.

2. In these Writ Petitions, the respective petitioners have challenged impugned orders, all dated 09.03.2016 passed by the first respondent Commissioner of Customs (Appeals). By the impugned orders, first respondent Commissioner of Customs (Appeals) has upheld Order-in-Originals dated 30.09.2015, 27.10.2015, 22.12.2015, 12.11.2015 and 12.11.2015 respectively passed by the second respondent Assistant Commissioner of Customs (Refunds-Sea).

3. By these Orders-in-Originals, the second respondent Assistant Commissioner of Customs had rejected the refund claims filed by the petitioners for refund of the Special Additional Duty of customs paid by the petitioners at the time of import under Sub-Section (5) of Section 3 of the Customs Tariff Act, 1975 on the ground of limitation.

4. Refund claims were filed by the petitioners under Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008-Cus dated 01.08.2008. Notification stipulates the conditions for granting refund. Relevant portion of the notification at the time when the refund claims were filed by the petitioners read as under:-

- i. the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;
- ii. the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;
- iii. the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs;".

- iv. the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;
- v. the importer shall, inter alia, provide copies of the following documents along with the refund claim:-

- (a) document evidencing payment of the said additional duty;
- (b) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
- (c) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

5. If the above conditions were satisfied, the jurisdictional customs officer like the second respondent herein was required to sanction the refund to an importer like the petitioners.

6. According to the petitioners, the Directorate of Revenue Intelligence (DRI) raided the business premises of the petitioners and seized all the documents under a mahazer dated 02.07.2013 and therefore the petitioners could not file the refund claims in time, i.e. within one year from the date of payment of the aforesaid duty.

7. It is submitted that after getting copies of the relevant bills of Entry on 14.05.2015 from the Directorate of Revenue Intelligence, they were filed by the petitioners with the second respondent. It is submitted that claims could not be filed in time as all the document including respective Bills of Entry had been seized by Directorate of Revenue Intelligence (DRI) on 02.07.2013 and limitation prescribed in the notification had expired when refund claims were filed and therefore such delay in filing the refund claim cannot be to the disadvantage of the petitioners as the said department was part of the Customs Department. On behalf of the petitioners, reliance was placed on the following decisions of the Hon'ble Supreme Court:-

- i. Assistant Commissioner (CT), LTU, Kakinada and Others Vs. M/s. Glaxo Smith Kline Consumer, Health Care Limited, Judgment dated 06.05.2020, in C.A.No.2413 of 2020.
- ii. Sanjana M. Wig (Ms) Vs. Hindustan Petroleum Corporation Limited, (2005) 8 SCC 242.

8. It is further submitted that merely because an alternate

remedy exist before the Customs, Excise and Service Tax Appellate Tribunal, it cannot ipso facto mean that the Writ Petitions are liable to be dismissed particularly in the light of the fact that these Writ Petitions were filed in the year 2016 and almost five years have elapsed since the filing of these Writ Petition. It would result in undue hardship and prejudice at this distant point of time to relegate the petitioners to work out the remedy before the Customs, Excise and Service Tax Appellate Tribunal.

9. It is further submitted that said Tribunal being a creature of the statute, is bound by the statute and the notifications issued thereunder and therefore will be compelled to disallow the refund claims by upholding the impugned orders as it cannot extend the period of limitation. It is submitted that there is also no hard and fast rule against writ petitions being filed where an alternate remedy exist.

10. The respondents have filed their counter and have stated that the respective Orders-in-Originals passed by the second respondent as affirmed by the first respondent in the respective impugned orders were well reasoned and therefore cannot be disturbed. It is therefore submitted that these writ petitions were liable to be dismissed. It is further stated that petitioners have an alternate remedy by way of an appeal before the Customs, Excise and Service Tax Appellate Tribunal and therefore the present writ petitions were liable to be dismissed on this score.

11. On merits, it was further submitted that the refund claims were examined on the strength of approval given by the Commissioner (Exports) dated 18.8.2014 in file No. S.Misc/22/2014-refunds and were scrutinised based on the bond executed by the petitioners in absence of duplicate copy of the respective Bills of Entries of the petitioners. It is submitted that since refund claims were time-barred, the orders passed by the second respondent as affirmed by the first respondent were unassailable.

12. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondents. Both the petitioners appear to have lent their I.E. Code to few other persons to import goods who have evaded anti-dumping customs duty.

13. The refund claims were filed on various dates, by which time, the time specified in the notification for filing the refund claims had already expired. Therefore, some of the claims in their entirety were rejected as time barred while some of the claims were allowed in part being filed within the limitation.

14. The second respondent allowed the refund claims to the extent they were filed within the period of one year from the date of payment of customs duty. However, majority of the claims have been denied as they were beyond the period of one year from the date of payment of customs duty.

15. The petitioners plead "Lex non-cogit ad impossibilia" in filing of refund claims in time. According to the petitioners, they had to liaison with the Directorate of Revenue Intelligence to get copies of the Bills of Entries and since the Bills of Entries were not given to the petitioners in time, there was a delay in filing the refund claims. It is therefore submitted that seizure of documents by the Directorate of Revenue Intelligence cannot be against the petitioners.

16. On the other hand, it is the contention of the respondents that nothing prevented the petitioners from filing the refund claims in time.

17. The Directorate of Revenue Intelligence (DRI) therefore entertained a reasonable belief that there was large scale evasion of anti-dumping duty and therefore carried search on 02.07.2013 and seized records of the petitioner in W.P.Nos.22385, 22386 & 34269 of 2016.

18. These included copies of the Bills of Entries, under which, the imported goods were cleared on payment of applicable duty. These seizures were purportedly in the exercise of powers vested under Section 110 of the Customs Act, 1962 by the officers of Directorate of Revenue Intelligence. Under Sub-Section 3 of the Section 110 of the Customs Act, 1962, a proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the Act. Both the petitioners have also been issued with Show Cause Notice dated 06.01.2014.

19. Sub-Section (4) of the Section 110 of the Customs Act, 1962, enjoins the officer of Customs seizing the documents to furnish copies of such documents or to allow the person to take copies of the extract from the seized documents in his presence. Therefore, to the extent, there was a delay in filing of refund claim on account of the seizure of the documents and until furnishing of the documents are to be excluded.

20. To avail the benefit of refund under the Notification No.102/2007-Cus dated 14.09.2007, an importer is required to file the refund claims along with the following documents:-

(a) document evidencing payment of the said additional

duty;

(b) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;

(c) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

21. Therefore, denial of benefit of Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008-Cus dated 01.08.2008 to the petitioners on the ground of limitation is not justified if the above documents enumerated above were seized by the officers of Directorate of Revenue Intelligence.

22. Copy of Mahazer dated 02.07.2013 of M/s. Kaamda Impex which has been filed indicates that documents were seized. It is not clear whether copies of other writ petitioner M/s.M.M.Enterprises were also seized on 02.07.2013 by the officers of Directorate of Revenue Intelligence. Copy of Mahazer of the said writ petitioner has not been filed.

23. In my view, denial of refund claims based on the limitation prescribed under the Notification cannot be justified and imposed against the petitioner M/s.Kaamda Impex as all the documents of the said petitioner were admittedly seized as per the Mahazer dated 02.07.2013. The said writ petitioner could not have filed the refund claims in absence of the vital documents.

24. Therefore, the impugned orders impugned in W.P.Nos.22385 and 22386 of 2016 and W.P.No.24269 of 2016 denying the benefit of refund of Special Additional Duty paid under section 5 (3) of the Customs Tariff Act, 1975 are quashed and cases are remitted back to the second respondent to pass a fresh order of refund of the amounts paid by the petitioner at the time of import, if the said writ petitioner has otherwise satisfied the other requirements of Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008-Cus dated 01.08.2008. Respondents shall pass orders on the balance refund claims within a period of three months from date of receipt of a copy of this order.

25. Insofar as the other petitioner in W.P.Nos.22387 & 22388 of 2016 namely M/s. M.M. Enterprises is concerned, it is not clear whether the documents of the said petitioner were also seized by the officers of the Directorate of Revenue Intelligence on 02.07.2013, though letter dated 14.5.2015 of the Directorate of Revenue Intelligence addressed to the second

respondent indicates the involvement of the said petitioner also in the alleged evasion of anti-dumping duty and that documents were seized from the premises of the said petitioner also.

26. However, in absence of specific documents to conclude that the import documents and other documents of the said petitioner were also seized or not by the officers of the Directorate of Revenue Intelligence, this Court is unable to form any positive opinion straight away.

27. Therefore, with a view to do substantial justice in the light of letter dated 14.05.2015 of the Directorate of Revenue Intelligence addressed to the second respondent, the impugned orders passed by the first respondent upholding the orders of the second respondent insofar as they deny the refund of customs duty under Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008-Cus dated 01.08.2008 are also quashed and the cases are also remitted back to the second respondent to examine whether the documents of the petitioner in W.P.Nos.22387 and 22338 of 2016, namely M/s.M.M.Enterprises, were also seized by the Directorate of Revenue Intelligence.

28. If the documents of the said writ petitioner, namely M/s.M.M.Enterprises, were also seized by the officers of the Directorate of Revenue Intelligence, the period up to the time of furnishing of the documents by the officer of the Directorate of Revenue Divisions required for filing and processing the refund claims under Notification No.102/2007-Cus dated 14.09.2007 as amended by Notification No.93/2008-Cus dated 01.08.2008 before the second respondent shall stand excluded.

29. The second respondent is therefore directed to pass appropriate orders on merits keeping the above observation in mind. If the refund claims were filed in time after such period is excluded, the claims may be examined and allowed on merits if the petitioners otherwise satisfy the requirement of Notification No.102/2007-Cus dated 14.9.2007 as amended by Notification No.93/2008-Cus dated 01.08.2008.

30. In the result, all the five Writ Petitions stand disposed of with the above observation. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To

1.The Commissioner of Customs
(Appeals - II), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2.The Assistant Commissioner of Customs,
(Refunds - Sea), Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

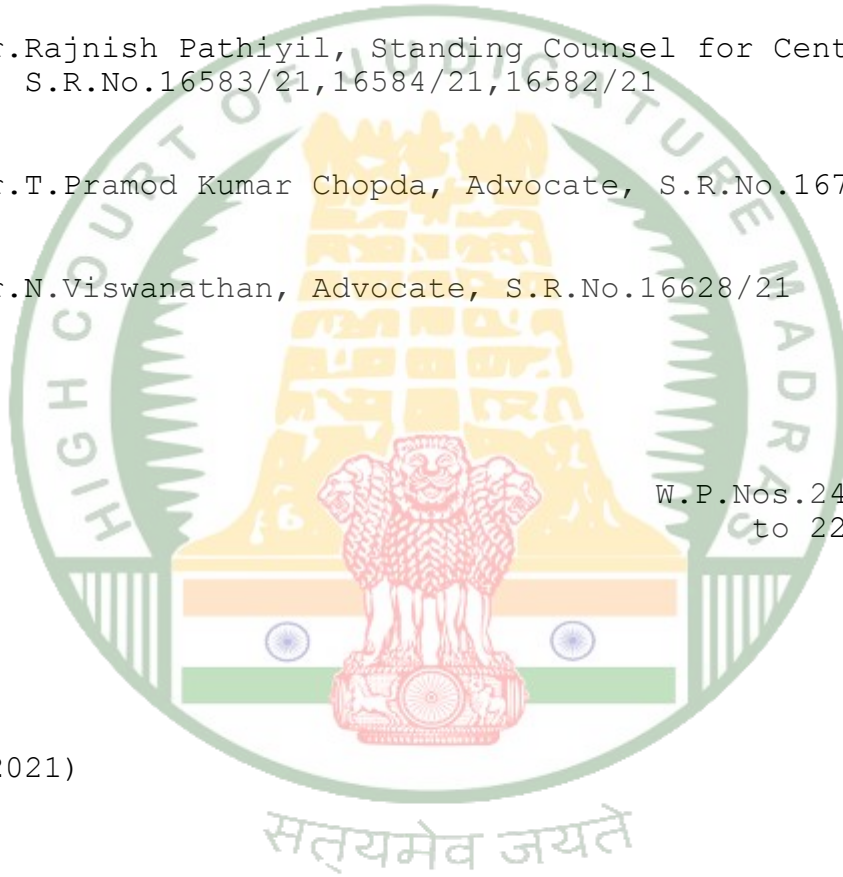
+3cc to Mr.Rajnish Pathiyil, Standing Counsel for Central GST
& Customs, S.R.No.16583/21,16584/21,16582/21

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.16753/21

+2cc to Mr.N.Viswanathan, Advocate, S.R.No.16628/21

W.P.Nos.24269 & 22385
to 22388 of 2016

SMI (CO)
RN(30/04/2021)



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