IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33055 of 2014

M/s.Sammarth Overseas & Credits Pvt., Ltd.,
Represented by its Director Mr.Sammarth Loya,
No.7-2-1851/2/A, Fatah Bagh,
Sanatnagar, Hyderabad - 500 018.

...Petitioner

Vs

1. Union of India,
   Represented by its Secretary,
   Department of Revenue, Ministry of Finance,
   North Block, New Delhi - 110 001.

2. The Chairperson,
   Central Board of Excise & Customs,
   North Block, New Delhi - 110 001.

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

4. The Assistant Commissioner of Customs (Refunds)
   Custom Hose,
   No.60, Rajaji Salai,
   Chennai - 600 001

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Declaration, declaring the Condition No.2(b) of Notification 102/2007-Customs dated 14.09.2007 of the provisions of the Central Excise 1944, CENVAT Credit Rules 2004, Central Excise Rules 2002 and Customs Act 1962 as null and void so far as the Petition is concerned and consequently, direct the fourth respondent herein to consider the petitioner's refund claim in File No.S24/SAD/2219/12-REFUNDS without applying the aforesaid condition.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]
For R2 to R4

No appearance for R1

O R D E R

The relief sought for in the present writ petition is for a declaration to declare the Condition No.2(b) of Notification 102/2007-Customs dated 14.09.2007 of the provisions of the Central Excise 1944, CENVAT Credit Rules 2004, Central Excise Rules 2002 and Customs Act 1962 as null and void so far as the Petition is concerned and consequently, direct the fourth respondent herein to consider the petitioner's refund claim in File No.S24/SAD/2219/12-REFUNDS without applying the aforesaid condition.

2. The learned counsel appearing on behalf of the petitioner made a submission that during the pendency of the writ petition, developments occurred and the Hon'ble High Court of Madras already passed an order in the case of PNP Polytex Private Limited Vs. Assistant Commissioner of Customs (Refunds), Chennai, reported in 2018 (360) E.L.T. 964 (Mad) and paragraph 6 of the judgment, which is relevant and the same is extracted hereunder:

> “6. Firstly, the proceedings were communicated to the incorrect address. The petitioner had no notice of the proceedings. Apart from that, before rejecting the petitioner's claim, it appears that no notice of hearing was issued to the petitioner. Though the statute does not mandate an opportunity of personal hearing, as the impugned order rejecting the petitioner's claim results in civil consequences, principles of natural justice have to be read into the provisions and the petitioner should have been afforded an opportunity, as the impugned order is an order of adjudication. Therefore, on the said ground, the impugned order calls for interference. Apart from that, it has to be seen as to whether mere noncompliance of a condition affixing rubber-stamp seal on the invoice would defeat the very refund claim. This issue was considered by the Large Bench of the CESTAT in the case of Chowgule & Company Pvt. Ltd., vs. Commissioner of

Customs & C. Ex. Reported in 2014 (306) E.L.T. 326 (Tri. - LB) and the Tribunal considered some what similar case as that of the petitioner pertaining to a commercial invoice and not a tax invoice, and it was pointed out as follows.

''5.2 ....For taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration / non-specification of the duty element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007.

5.3 In the Mangalore Chemicals and Fertilizers Limited's case (supra), the Hon'ble Apex Court observed that a distinction, between the provisions of a statute which are of a substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in nature on the other, must be clearly drawn. It was further held in the said decision that while interpreting an exemption clause, liberal construction should be imparted to the language thereof if the subject falls within the scope of the exemption. It was also held that, the need to resort to any interpretative process would arise only where the meaning is not manifest on the plain words of the statute. As held by the Hon'ble Apex Court in the New India Sugar Mills Limited v. Commissioner of Sales Tax, Bihar [AIR 1963 S.C. 1207]- it is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. Applying the ratio of these decisions to the facts of the case before us, it can be seen

> that the condition relating to endorsement on the invoice was merely a procedural one and the purpose and object of such an endorsement could be achieved when the duty element itself was not specified in the invoice. Since the object and purpose of the condition is achieved by non-specification of the duty element, the mere non-making of the endorsement could not have undermined the purpose of the exemption. Thus we concur with the view taken by this Tribunal in the cases of Equinox Solution Limited and Nova Nordisk India Private Limited (supra)."

3. In view of the developments occurred, the issues are to be reconsidered by the 4th respondent / original authority.

4. Thus, the matter is remitted back to the 4th respondent for fresh consideration. Accordingly, the 4th respondent is directed to reconsider the issues raised by the petitioner afresh on merits and in accordance with law and by affording opportunity to the writ petitioner, take a decision and pass orders as expeditiously as possible.

5. With these directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Union of India,
   Department of Revenue, Ministry of Finance,
   North Block, New Delhi – 110 001.

2. The Chairperson,
   Central Board of Excise & Customs,
   North Block, New Delhi – 110 001.

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4. The Assistant Commissioner of Customs (Refunds)
   Custom Hose,
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   Chennai - 600 001.

+1cc to Mr.S.Murugappan, Advocate, S.R.No.39842

+1cc to Mr.A.P.Srinivas, Senior Standing Counsel, S.R.No.40085

W.P.No.33055 of 2014

KSM(CO)
RLP(31/08/2021)