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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.17407 of 2020

M/s.Biesse Manufacturing Co. P. Ltd.,
Rep. by its Director : K.V.Prasanth
Survey No.28/1, and 28/2,
Nagarur Village, Huskur Road,
Dasanpura Hobli,
Bengaluru – 562 123. ...Petitioner

Vs

The Assistant Commissioner of Customs (Refunds-II),
Office of the Commissioner of Customs, Chennai-II,
Custom House, 60, Rajaji Salai,
Chennai-600 001. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorarified mandamus, to call for the records relating to the impugned proceedings passed by the respondent in R.No.SR-203/2019-REFUNDS-II dated 6.8.2019 and to quash the same as unsustainable and contrary to settled law that filing of refund claim in wrong forum itself will not hit limitation and further direct the respondent to process the refund application and grant refund of SAD paid on imports.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mr.Umesh Rao
Senior Standing Counsel

O R D E R

Heard Mr.M.A.Mudimannan, learned counsel for the petitioner and Mr.Umesh Rao, learned Senior Standing Counsel for the respondent.

2. The petitioner is an importer and had imported certain consignments through the Inland Container Depot (ICD) at Bangalore as well as through Chennai Customs during the period October 2015 to September 2016. Customs duty along with Special Additional Duty (SAD) was remitted. The petitioner thereafter

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sought refund of the SAD under two refund applications dated 26.10.2016 and 04.01.2017.

3.The authorities at Bangalore allowed the refund in respect of the imports through ICD Bangalore while rejecting the claims in respect of the imports through Chennai Customs.

4.The Commissioner (Appeals) passed orders dated 02.11.2018 confirming the rejection on merits, however, stating that the petitioner may well approach the Customs authorities in Chennai in respect of the refunds for the imports effected through Chennai Customs. He categorically states that there is no time limit for filing of such refund application citing the decision of the Delhi High Court in the case of Sun Pharmaceuticals Industries Ltd (WP(Civil)No.7120 of 2001, dated 22.08.2016). This position has also been accepted by the Central Board of Indirect Taxes and Customs (Board) vide Circular bearing No.1063/2/2018-CX dated 16.02.2018.

5. Pursuant to the orders of the Commissioner (Appeals), the petitioner filed refund application on 14.05.2019, which has come to be rejected vide impugned order dated 06.08.2019 solely on the ground that the claims are time barred. In rejecting the claims, reference is made to Notification No.102/2007 dated 14.09.2007.

6. The rejection of the claims on the ground of limitation is clearly unacceptable for the reasons that the Commissioner (Appeals) has set out the correct position of law in this regard. The Delhi High Court in the case of Sun Pharmaceuticals (supra) has held that there would be no limitation applicable for the filing of refund applications and the 2018 circular issued by the Board also supports this position.

7. This position has also been reiterated subsequently and in the case of Sony India Pvt. Ltd. v. The Commissioner of Customs, New Delhi (CUSAA 3/2014 & C.M.No.829/2014), another Division Bench of the Delhi High Court states:

> '17.Plainly, therefore, Section 27 was understood as not applying to SAD cases, even though it was in the statute book for many years. Yet, with the introduction of the circular and then the notification (No.93), the Customs authorities started insisting that such limitation period which was prescribed with effect from 01.08.2008 (by notification) became applicable. There is a body of law that essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation. Khemka and Co. (Agencies) Private Ltd. v. State of

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Maharashtra, (1975) 35 STC 571 and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail.'

8. Moreover, the orders of the Commissioner dated 02.11.2018 have attained finality, the Revenue acceding to the position of law stated and applied therein. The impugned orders rejecting the refund applications on the bar of limitation fail, and are set aside. The matter is restored to the file of the respondent for consideration on merits and shall be disposed, after hearing the petitioner, within a period of eight (8) weeks from today.

9. This writ petition is allowed in the above terms. No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

vs

To

The Assistant Commissioner of Customs (Refunds-II),
Office of the Commissioner of Customs, Chennai-II,
Custom House, 60, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.K.Jayachandran, Advocate SR.No.32838

+1cc to Mr.K.Umesh Rao, Advocate SR.No.32492

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NMI(CO)
RVM(24/09/2021)

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