BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.07.2021
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.9574 of 2021

Vedanta Limited,
SIPCOT Industrial Complex,
Madurai Bye-Pass Road,
T.V.Puram P.O., Tuticorin - 628002. ... Petitioner

Vs.

1.The Assistant Commissioner of Customs,
Customs House, Tuticorin - 628002.

2.The Commissioner of Customs,
Customs House, Tuticorin - 628002. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the letters in DIN No.20210281OH000000CFCA, dated 22.02.2021 and DIN No.20210481OH0000666AB7, dated 13.04.2021 on the file of the Respondent No.1 and quash the same and consequently directing the respondent No.1 to disburse interest on delayed disbursal of refund to the tune of Rs.35,93,64,311/- to the petitioner as computed vide letter, dated 31.12.2020 in terms of the order dated 01.10.2020 passed by this Honourable Court in W.P(MD)No.12969 of 2020 and the Commissioner (Appeals), vide order-in-Appeal No.12969-TTN(Cus) dated 18.02.2020.

For Petitioner : Mr.V.Ragavachari,
Senior Counsel for
Mr.Y.Prakash

For Respondents : Mr.B.Vijay Karthikeyan

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the letters in DIN No.20210281OH000000CFCA, dated 22.02.2021 and DIN No.20210481OH0000666AB7, dated 13.04.2021 on the file of the first respondent and quash the same and consequently directing the first respondent to disburse interest on delayed disbursal of refund to the tune of Rs.35,93,64,311/- to the petitioner as computed vide letter, dated 31.12.2020 in terms of the order dated 01.10.2020 passed by this Honourable Court in W.P(MD)No.12969 of 2020 and the Commissioner (Appeals), vide order-in-Appeal No.12969-TTN(Cus) dated 18.02.2020.

2. The brief facts of the case are as follows:

The petitioner Company has the manufacturing facilities at Tuticorin, Tamil Nadu and is manufacturing Copper Cathodes, Wire, Rods etc., and is importing raw materials from outside India. While the matter stood thus, the petitioner had paid excess customs duty to the tune of Rs.35,93,64, 311/-, for which, it had been held to be entitled for refund by the Commissioner (Appeals) vide Order-in-Appeal No.01/2020-TTN(Cus) dated 18.02.2020. Since the refund was not made, the petitioner was constrained to file W.P(MD)No.12969 of 2020. The said writ petition was allowed with a direction to refund the excess customs duty paid by the petitioner with interest within a period of four weeks. Subsequently, the vide order of the first respondent dated 18.11.2020, the amount was disbursed to the petitioner. However, the first respondent has not disbursed any interest on the amount of Rs.35,93,64,311/-. Thereafter, the petitioner approached the first respondent requesting to disburse the interest accrued. However, the first respondent vide the impugned letter dated 22.02.2021 rejected the claim of the petitioner stating that the interest will not accrue from three months from the date of filing the refund claim, but from three months from the date of the Commissioner(Appeals) order. Challenging the said letter, the petitioner has filed the present writ petition with the aforesaid prayer.

3. The learned standing counsel for the respondents would fairly state that since there was no interim order in the appeal filed by the respondents, as per the circular bearing No.276/186/2015-CX.8A dated 01.06.2015 issued by the Government of India the petitioner is entitled for the interest.

4. Heard the submissions made on either side and perused the materials available on record.

5. It is seen that with regard to the claim made by the petitioner, earlier a writ petition in W.P(MD)No.12969 of 2020 was filed and this Court vide order dated 01.10.2020, has specifically directed the respondents to disburse the refund due to the petitioner at the applicable rates of interest. The relevant portion of the said order is extracted hereunder:

> "*6. At this stage, the learned counsel appearing for the petitioner drew my attention to Circular bearing No.276/186/2015-CX.8A dated 01.06.2015 issued by the Government of India. It reads as follows:-*
>
> "***<u>Circular: 276/186/2015-CX.8A dated 01-Jun-2015</u>***
>
> ***Refund/Rebate claim arising out of order of Commissioner/Commissioner (Appeals) not to be withheld unless stay order has been obtained.***
>
> ***C.B.E. & C. Instruction F. No. 276/186/2015-CX.8A, dated 1-6-2015***
>
> *Government of India*
> *Ministry of Finance (Department of Revenue)*
> *Central Board of Excise & Customs, New Delhi*

Subject : Proposal to file Special Leave Petition (SLP) against Order dated 11-3-2015 of the Hon'ble High Court of Karnataka in Writ Appeal No. 2769/2013 filed by M/s. Madura Coats Pvt. Ltd, Bengaluru [2015 (39) S.T.R. 188 (Kar.)] - Regarding.

I am directed to refer to your SLP proposal C.No. IV/03/249/2013/ Legal ST II, dated 17-4-2015 and Chief Commissioner, Central Excise and Service Tax, Bengaluru Zone letter dated 7-5-2015 on the above subject.

2. The matter has been examined in the Board. Board has decided that this case does not deserve filing of SLP. The order dated 11-3-2015 of the Hon'ble High Court should be implemented forthwith. In this regard, I am further directed to invite your attention to para (3) of Circular No. 572/9/2001-CX, dated 22-2-2001 [2001 (129) E.L.T. (T7)] regarding disposal of refund/rebate claims where application is pending at appellate level, which provides as under :-

(3) The cases where refund arises due to order of Commissioner (Appeals) or Commissioner of Central Excise/Customs and decision is taken to contest them before CEGAT.

In such cases appeal/stay application should be filed expeditiously well before the expiry of stipulated period of three months (and not waiting for the last date of filing of appeal). However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order diving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to obtain stay order expeditiously where the orders passed by Commissioner (Appeals) suffer from serious infirmities and it involves grant of heavy refunds.

(Emphasis supplied)

3. The refund etc. allowed in such cases would be subject to the outcome of the appeal.

4. You are accordingly directed that Board's Instruction on refund, which are self-contained and unambiguous should be followed meticulously.

This issues with the approval of Chairman (EC)."

7. As rightly pointed out by the learned counsel appearing for the petitioner, if no interim order has been obtained by the department within a specified period, refund has to be allowed and of course the same *will be subject to the outcome of the appeal. In the case on hand, the appellate authority passed the order dated 18.02.2020. We are now on 01.10.2020. More than seven full months have elapsed in the meanwhile. If the department was aggrieved, the department should have expeditiously filed an appeal and pursued the matter and obtained interim order. The petitioner cannot be made to wait indefinitely. The department cannot take its own sweet time to file the appeal and pursue the same. The department ought to have acted expeditiously in the matter.*

8. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner is afterall asking for his money in terms of the circular issued by the Government of India. I therefore direct the respondents herein to implement the Order-in-Appeal dated 18.02.2020 and disburse the refund due to the petitioner at the applicable rates of interest. This refund shall be made within a period of four weeks from the date of receipt of a copy of this order.

6. Admittedly, there is no interim order in the appeal filed by the respondents and therefore, the petitioner is entitled for the interest as ordered by this Court dated 01.10.2020 in W.P(MD) No.12969 of 2020. But, in spite of the orders passed by this Court and in spite of the circular bearing No.276/186/2015-CX.8A dated 01.06.2015, the first respondent had refused to pay interest to the petitioner and had driven the petitioner to come before this Court once again for his entitlement. The earlier order is very clear as to the interest.

7. In view of the foregoing reasons, this writ petition is allowed and the impugned letters of the first respondent in DIN No.20210281OH000000CFCA, dated 22.02.2021 and DIN No.20210481OH0000666AB7, dated 13.04.2021 are set aside. The respondents are directed to pay the interest due to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note: (i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Assistant Commissioner of Customs,
Customs House, Tuticorin - 628 002.

2.The Commissioner of Customs,
Customs House, Tuticorin - 628 002.

+1 CC to M/s.Y.PRAKASH, Advocate (SR-21365[F] dated 06/07/2021)

W.P(MD)No. 9574 of 2021

05.07.2021

RD(23.07.2021) 5P 4C