BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.6226 of 2019

and

WMP(MD)No.4972 of 2019

M/s.3E Infotech,
Rep.by David Enstin, Proprietor ... Petitioner

Vs.

The Assistant Commissioner of CGST
& Central Excise,
Central Revenue Buildings,
Tractor Street,
NGO “A” Colony,
Tirunelveli - 627 007. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to grant interest as requested vide letters dated 09.11.2018 and 06.12.2018 and pass any order(s) as this Court may deem fit and proper in the facts and circumstances of the present petition.

For Petitioner : Mr.P.Ayyamperumal

For Respondent : Mr.K.Prabhu

ORDER

Heard the learned counsel for the petitioner and the learned standing counsel for the respondent.

2.The petitioner is a company engaged in export of information of software. During the financial year 2015-16, the petitioner had remitted service tax of Rs.9,72,458/- on the said export. Later, the petitioner realised that remittance made by them was under a mistake impression regarding their liability. Therefore, on 01.07.2016, an application for refund was made. The petitioner informed the respondent that the amount was paid inadvertently. The respondent vide refund sanction order No.R-90/2016 dated 04.10.2016 allowed refund of Rs.5,32,772/-. But for the balance amount of Rs.4,39,686/-, it was held by the authority concerned that the claim was time barred. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The appellate authority vide order dated 12.06.2017 rejected the appeal. The petitioner thereupon moved the Tribunal.

3.The CESTAT also vide order dated 27.10.2017 rejected the petitioner's second appeal. Aggrieved by the same, the petitioner filed CMA No.601 of 2018 before the Hon'ble Division Bench of the Madras High Court. Vide order dated 28.06.2018, the Hon'ble Division Bench allowed the CMA and the matter was remitted to the file of the authorities for consideration of the petitioner's claim for return of money. It was specifically held that application under Section 11 B of the Act cannot be rejected on the ground that it is barred by limitation. Thereafter, the respondent sanctioned refund of the sum of Rs.4,39,686/-. Thereafter, the petitioner submitted an application on 09.11.2018 seeking payment of interest on the delayed refund of the sum of Rs.4,39,686/-. The petitioner submitted one more letter dated 06.12.2018 seeking payment of interest for the delayed refund of the sum of Rs.5,32,772/-. Since both these requests were not acted upon by the respondent, the present writ petition came to be filed.

4.The respondents have filed a detailed counter affidavit and the learned standing counsel took me through the averments set out therein.

5.The learned counsel for the petitioner submitted that the petitioner was not at all liable to pay service tax amount and yet the sum of Rs.9,72,458/- paid by the petitioner was wrongfully withheld by the respondent. From the said wrongful detention, till the date of actual refund, the respondent is liable to pay interest. In this case, the amount was refunded in two instalments. Thereafter, for the delayed refund, the petitioner wanted this Court to direct the respondent to pay interest. In this regard, the petitioner's counsel placed reliance on the decisions reported in 1985 (19) ELT E (SC), 1991 (52) ELT 165 (MAD), 2006 (196) ELT 257 (SC), 2006 (204) ELT 386 (MAD), 2011 (268) ELT 461 (All), 2013 (290) ELT 496 (MAD) & 2015 (324) ELT 299 (Guj).

6.I carefully considered the rival contentions and went through the materials on record. There can be no doubt that the petitioner was not liable to pay the said amount of Rs.9,72,458/-. Therefore, when a request for refund was made, it ought to have been straightaway conceded. Instead, the respondent chose to refund a sum of Rs.5,32,772/- alone and declined to refund the balance amount of Rs.4,39,686/-. In order to secure refund of the said balance amount, the petitioner not only had to move the Commissioner of Central Excise (Appeals-1), Madurai but also the Tribunal and thereafter, the Madras High Court by filing CMA. Only after the CMA was allowed by the High Court, refund came to be made.

7.Therefore, I come to the conclusion that the respondent having dragged the petitioner to needless litigation and delayed in making refund ought to pay interest. I have no difficulty in accepting the contention advanced by the petitioner. I direct the respondent to pay interest on the refund of Rs.4,36,686/- at the rate of 6% per annum, from the date on which the request was made till the date of actual refund, within a period of four weeks from the date of receipt of copy of the order.

8.Now, the question that arises as to whether the respondent should be directed to pay any interest on the amount of Rs.5,32,772/-. I have to sustain the stand of the respondent that there was no unlawful collection of the amount by the department. It was the petitioner who remitted the said amount. For the mistake committed by the petitioner, the respondent cannot be blamed. Once the request was made by the petitioner, it was expeditiously considered and refund was also made. I reject the contention of the petitioner's counsel as regards payment of interest on refund of Rs.5,32,772/-.

9.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: 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

The Assistant Commissioner of CGST & Central Excise,

Central Revenue Buildings, Tractor Street,

NGO “A” Colony, Tirunelveli – 627 007.

+1 CC to M/s.P.AYYAM PERUMAL,Advocate(SR-11276[F] dated 16/03/2021)

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and
WMP(MD)No.4972 of 2019
15.03.2021

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