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ORDER SHEET

WPO 452 of 2018
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VISHAL ENTERPRISE & ANR.
Vs
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 4th March, 2022

(Via Video Conference)

Mr. Biswajit Mukherjee,
Mr. Soumyajit Mishra, Advs.
…for the petitioners
Mr. Bhaskar Prosad Banerjee, Adv.
…for respondent Customs
Mr. Kaushik Dey, Adv.
…for respondent DRI
Ms. Manasi Mukherjee, Adv.
…appears

The Court: Heard learned advocates appearing for the parties.

In this matter petitioners have two-fold grievances, firstly non-compliance of the order of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), dated 11th May, 2018, passed in an appeal filed by the petitioners against the original order of adjudication dated 30th January, 2013 remanding the matter to the adjudicating authority for passing a fresh order upon which the adjudicating authority is still sitting though more than three years have been passed and secondly grievance against non-refund of the amount of Rs. 30 lacs which was though paid in course of investigation in question but at the time of filing of the appeal in question before the CESTAT appeal, the same amount of Rs. 30 lacs by making the prayer before the Tribunal to treat the same as condition precedent of pre-deposit under Section 129E of the Customs Act the petitioners were allowed to file the appeal without insisting for making any fresh pre-deposit and in view of the fact of entertaining the appeal in question without pre-deposit it can be treated as pre-deposit amount. Petitioner in support of his contention for refund of the aforesaid amount of pre-deposit by treating as pre-deposit relies on a master circular no. 1053/02/2017-CX dated 10th March, 2017 issued by the Central Board of Excise and Customs particularly paragraph 26(iv) of the said circular where it says that in the event of remand, refund of pre-deposit shall be payable along with interest and it is the case of the petitioners that non-refund of the aforesaid amount which has been treated as pre-deposit, after the aforesaid order of remand by the CESTAT is in clear violation of the aforesaid circular dated 10th March, 2017.

It is an admitted position that in implementation and compliance of the aforesaid order of the Tribunal dated 11th May, 2018 till date no fresh adjudication order or any final decision has been taken and no such refund of payment has been made after the order of remand in Appeal and this admitted position which appears from record could not be contradicted by the learned advocate appearing for the respondent Authorities.

Considering the submissions of the parties, this writ petition being WPO 452 of 2018 is disposed of by directing the adjudicating authority/respondent concerned to pass a fresh order in accordance with law, in compliance of the aforesaid order of Tribunal dated 11th May, 2018, by passing a reasoned and speaking order after giving opportunity of hearing to the petitioners, within two months from the date of communication of this order. The respondent concerned is also directed to consider the claim of the petitioner for refund of the aforesaid amount in view of the order of remand by the Tribunal, and pass order of refund by taking into consideration the aforesaid circular of the Board dated 10th March 2017, after giving opportunity of hearing to the petitioners or their authorised representatives by taking into consideration the representation of the petitioners by treating the copy of the instant writ petition as representation, within four weeks from the date of communication of this order.

With these observations and directions, this writ petition stands disposed of.

(MD. NIZAMUDDIN, J.)

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