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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.16036 of 2021

Harrow Exports
Rep.by its Partner K.P.Abdul Azeez
TTN 344A-14
Kaoser Complex, Kannur 670 002. ... Petitioner

-Vs-

1. The Commissioner of GST and Central Excise (Appeals), Coimbatore, No.1, Williams Road Cantonment, Trichirapalli 620 001.

2. The Deputy Commissioner of Customs Inland Container Depot, Concor, Vidyalam Palladam Main Road, Veerapandi (P.O.) Tiruppur 641 605. ... Respondents

Prayer :

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to the order in Appeal No.71/2021-TRY (CUS) dated 30.03.2021 on the file of the 1st respondent and quash the same and consequently direct the 2nd respondent to refund the drawback and interest paid by the petitioner.

For Petitioner : Mr.J.V.Niranjan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the entire records pertaining to the order in Appeal No.71/2021-TRY (CUS) dated 30.03.2021 on the file of the 1st respondent and quash the same and consequently direct the 2nd respondent to refund the drawback and interest paid by the petitioner.

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2. The petitioner is an exporter. He availed duty drawback under the relevant Rules and as per the conditions imposed. For availing duty drawback, he has to file proof within a time frame that he has realised the sale proceeds in foreign exchange. According to the Revenue, the petitioner has not filed the proof for realisation of sale proceeds in foreign exchange. Therefore, there has been an order passed by the original authority recovering the duty drawback availed by the petitioner, as against which an appeal was filed. In the meanwhile, it was the petitioner's case that, proof has been filed pursuant to the alert put up in the web portal and that has not been considered.

3. Subsequently, the original authority itself, having accepted the case of the petitioner, had directed refund of the amount paid by way of duty drawback, which was recovered from the petitioner and accordingly it was directed to be paid.

4. However, there was no interest paid for the amount refunded to the petitioner, as against which the petitioner filed an appeal before the first appellate authority, who also confirmed the same, saying that the petitioner is not entitled for the interest. Only in that circumstances, the petitioner has approached this Court by filing the present writ petition.

5. Heard Mr.J.V.Niranjan, learned counsel appearing for the petitioner, who would submit that, when the petitioner is entitled to get back the duty drawback amount paid, which was recovered from the petitioner, then certainly the petitioner would be entitled to get the interest also and that cannot be denied.

6. However, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent Revenue would submit that, as against the order impugned, further appeal by way of revision can be filed under Section 35EE of the Central Excise Act, 1944 (In short, 'the Act') before the authority concerned, which is an effective alternate remedy and without exhausting the same, the petitioner cannot come before this Court.

7. In respect of the said submission made by the learned Senior Standing Counsel for the Revenue, it is the contention of the learned counsel for the petitioner that, even if such an appeal by way of revision under Section 35EE of the Act referred to above, it will take longer time to decide the same, as the appeals filed long years back have not been disposed of by the authority. Therefore, that cannot be treated as an effective alternative remedy.

8. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials available on record.

9. Merely because it takes some time by the revisional authority to decide the revision to be filed in this regard under Section 35 EE of the Act, it cannot be stated that it would not be an efficacious alternative remedy. If at all the issue relates only to interest, whether that should be paid to the petitioner or not, since it is a simple issue, it can be decided easily at the earliest by the authority concerned before whom if such revision is filed by the petitioner. Therefore, within a time frame such revision to be filed by the petitioner can be disposed of.

10. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the petitioner can approach the revisional authority under Section 35EE of the Act by filing a revision within a period of two weeks from the date of receipt of a copy of this order.

- Once such revision is filed, the same shall be entertained and decided by the revisional authority within a period of 60 days thereafter, as the issue to be decided in the said revision is only with regard to the claim of the petitioner for getting interest.

- It is made clear that the revisional authority shall give notice to the petitioner and the Revenue, fix a date for personal hearing and after affording such an opportunity of effective personal hearing to both parties, such a decision as indicated above shall be made.

11. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of GST and Central Excise
   (Appeals), Coimbatore, No.1, Williams Road
   Cantonment, Trichirapalli 620 001.

2. The Deputy Commissioner of Customs
   Inland Container Depot, Concor, Vidyalam
   Palladam Main Road, Veerapandi (P.O.)
   Tiruppur 641 605.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.16337
+1cc to Mr.J.V.Niranjan, Advocate, S.R.No.15429

W.P.No. 16036 of 2021

SRA(CO)
CT 23/03/2022

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