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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2022

CORAM :
THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.19524 of 2022

M/s.Supreme Petrochem Ltd.,
Represented by its Manager-Commercial Taxes
200 Feet Road, Ammulavoyil Village,
Andarkuppam Post, Manali,
Chennai-600 103

...Petitioner

Vs.

The Assistant Commissioner of Central Taxes & Central Excise,
Tiruvottiyur Division,
Chennai-North Commissionerate,
No.459 (old No.317), Anna Salai, Teynampet,
Chennai 600 018. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in passing the impugned order in Original No.14/2022-2023 dated 02.06.2022 and quash the impugned order and direct the respondent to allow the petitioner to carry forward the accrued Cenavt Credit to the electronic credit ledger of the GST regime as directed by this Court in its order dated 22.02.2022 arising out of W.P.No.1160 of 2019.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.V.Sundareswaren,
Senior Panel Counsel, GST

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O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in passing the impugned order in Original No.14/2022-2023 dated 02.06.2022 and quash the impugned order and direct the respondent to allow the petitioner to carry forward the accrued Cenavt Credit to the electronic credit ledger of the GST regime as directed by this Court in its order dated 22.02.2022 arising out of W.P.No.1160 of 2019.

2. The case of the petitioner is the petitioner was engaged in the manufacture of "Expandable Polystyrene" and registered as a manufacturer with the erstwhile Central Excise Department. The petitioner used to import their raw material, namely "Styrene Monomer" on payment of applicable import duties and use the same for the manufacture of the final product within their unit and the said compound was entitled to CENVAT credit under Section 3(1) and Additional Duty of Customs u/s 3(5) of the Customs Tariff Act. While that being so, the supplier of the petitioner claimed demurrage charges from the petitioner for the delay in unloading the vessel at the port of import, which was paid by the petitioner. It is pertinent to mention that the petitioner paid a total CVD of Rs.50,66,165/- and SAD of Rs.18,29.899/-, totalling Rs.68,96,064/- in respect of the imports made from

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June 2016 to March 2017. Since, the goods imported were their inputs, the CVD and SAD paid by them on 14.12.2017 was entitled to CENVAT credit. Thereafter, the Cenvat Credit Rules, 2004 got superseded with new Cenvat Credit Rules, 2017, which was relevant only for the goods not covered under GST.

3. The grievance of the petitioner is that the differential CVD and SAD cannot be claimed as CENVAT credit by filing a revised return, as the said additional CVD and SAD itself was paid only on 14.12.2017, by which the time limit to file revised return for the month of June 2017 was already over. Therefore, the petitioner filed a claim to refund the said amount of Rs.68,96,064/- before the respondent and the same was rejected vide the Order in Original No.16/2018-19, dated 16.07.2018. Aggrieved by the same, the petitioner filed a Writ Petition before this Court and the same was disposed of on 22.02.2022 in W.P.No.1160 of 2019 by remanding the matter back to the respondent. Pursuant to the said order, the respondent offered a personal hearing to the petitioner on 25.04.2022 and allowed the petitioner to file his written submission as directed by this Court in W.P.No.1160 of 2019. However, the respondent once again rejected the claim of the petitioner vide impugned Order-in-Original S.No.14 of 2022-2023, dated 02.06.2022.

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Hence, this present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that this Court, while remanding the matter back to the respondent, specifically stated that the claim made by the petitioner need not be considered for the purpose of refund of their claim, but for permitting the petitioner to carry forward the accrued credit to the electronic credit ledger of the GST regime. However, the respondent, disregarded the order of this Court and mechanically passed the impugned order vide Original S.No.14 of 2022-2023, dated 02.06.2022. Therefore, he prayed for allowing of this Writ Petition in the light of the order of this Court in W.P.No.1160 of 2019.

4. Mr.V.Sundareswaren, learned Senior Panel Counsel, GST appearing for the respondent submitted that as against the impugned order passed by the respondent, there is an appeal remedy available before the Appellate Commissioner under Section 107 of the Central Goods and Services Tax Act, 2017 and the petitioner, without exhausting the said appeal remedy, has filed the present petition under Article 226 of the Constitution of India, which is not sustainable. Hence, he prays for dismissal of this petition.

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5. Though the petitioner claim that the order of this Court was not adhered by the respondent, having regard to the statutory alternative remedy which is available under Section 107 of the CGST Act, this Court is not inclined to interfere with the impugned order passed by the respondent. However, liberty is granted to the petitioner to approach the Appellate Commissioner by way of filing an appeal within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed within a period of twelve weeks, the Appellate Commissioner shall consider and pass appropriate orders on the same as expeditiously as possible, after providing opportunity of hearing to the petitioner.

6. Accordingly, this Writ Petition is disposed of. No Costs.

02.08.2022

Index : Yes / No
Internet : Yes / No
Speaking order / Nonspeaking order
Anu

Note to Office: Issue the order copy on 23.09.2022

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M.DHANDAPANI, J.

Anu

To

The Assistant Commissioner of Central Taxes & Central Excise,
Tiruvottiyur Division,
Chennai-North Commissionerate,
No.459 (old No.317), Anna Salai, Teynampet,
Chennai 600 018.

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