BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.5448 of 2022
and
W.M.P.(MD)No.4415 of 2022

M/s.Dalmia Cement (Bharat) Ltd.,
Rep. by its Senior General Manager,
Mr.Bharat LalAgarwalla,
1, Main Road, Dalmiapuram,
Trichy, Tamil Nadu – 621 651. .. Petitioner

Versus

The Assistant Commissioner of GST and Central Excise,
Trichy II Division,
No.1, Williams Road, Cantonment,
Tiruchirapalli – 620 001. .. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records of the impugned order in Original No.03/2022-R vide DIN: 20220259XN0202000B13, dated 24.02.2022, issued by the respondent, quash the same as it is in gross violation of principles of natural justice, is arbitrary, perverse and violative of Article 14 of the Constitution and consequently, direct the respondent to consider the documents and evidences produced by the petitioner and grant refund of the excess excise duty paid expeditiously.

For Petitioner : Mr.S.P.Maharajan

For Respondent : Mrs.S.Ragaventhre
Junior Standing Counsel

ORDER

The petitioner has filed this Writ Petition seeking to quash the order of the respondent, dated 24.02.2022, and consequently, to direct the respondent to consider the documents and evidences produced by the petitioner and grant refund of the excess excise duty paid expeditiously.

2.The petitioner's refund claim petition was rejected by the respondent, vide the impugned order in Original No.03/2022-R, DIN: 20220259XN0202000B13, dated 24.02.2022.

3.The petitioner along with three of their Units located in different jurisdictions, which was under the control of Large Taxpayers Unit [LTU], New Delhi, filed a consolidated refund claim for an amount of Rs.7,18,65,344/- on 31.03.2010, which was later reduced to Rs.5,96,01,379/-. Based on the deficiencies pointed out by the LTU, the petitioner submitted a reply on 23.11.2020. However, for want of further documents, the refund application was returned on 12.01.2011. Thereafter, the petitioner vide letter dated 08.03.2011, requested the LTU to transfer the said application to the respective Executive Commissionerates as they had opted out of LTU. Accepting the plea, LTU, New Delhi, transferred the copy of the said application to the respective Commissionerates for verification and necessary action and instructed the petitioner to file refund application with the respective Commissionerates. Accordingly, the petitioner filed a refund claim for Rs.3,25,72,830/-, which pertains to Dalmia Cements (Bharat) Ltd., Dalmiapuram, on 16.08.2011 before the respondent. Later, it was returned to the petitioner on 24.08.2011 for want of further documents. Thereafter, the petitioner presented the claim on 24.01.2012 along with relevant documents.

4.The refund claim was rejected, vide Order-in-Original No.69/2012-R, dated 30.05.2012. Against the same, the petitioner filed an appeal before the Commissioner (Appeals) and the Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli, dismissed the said appeal vide Order-in-Appeal No.337/2012, dated 29.11.2012. Thereafter, the petitioner moved the Customs Excise and Service Tax Appellate Tribunal [CESTAT], Chennai. The CESTAT, vide Final Order No.40669/2020, dated 02.03.2020, remanded the matter back for *de novo* adjudication holding that the time limit was to be computed only until the first claim submission. In this regard, various letters were sent to the Department seeking to grant refund.

5.The petitioner had responded vide letter dated 02.09.2021 that the entire list of documents had already been submitted at the time of filing of the refund claim way back in the year 2011/2012. It was further communicated that as the documents were voluminous, the petitioner is ready to provide any specific document as and when the same is called for. However, there was no reply for the above said letter. Therefore, the petitioner has sent three reminders and there was no response. Hence, the petitioner filed a Miscellaneous Petition on 14.12.2021 before the Tribunal seeking direction to the authorities to process the remanded refund claim at the earliest, vide Excise Miscellaneous Application No.40373/2021 in Excise Appeal No. 40471/2013 and the same is pending. Meanwhile, the authority vide letter dated 12.01.2022, fixed the personal hearing on 19.01.2022. The petitioner attended the personal hearing on the said date and submitted the workings along with sample copies of invoices and a written submission. When the Miscellaneous Application was heard before the Tribunal, the petitioner represented that refund claim was being processed and the application had become infructuous. Hence, an order was passed to that effect by the Tribunal, vide Misc.Order No.40078/2022, dated 03.02.2022.

6.After a personal hearing, the respondent on 18.02.2022 sought further documents to process the refund claim. The petitioner, within a week, vide letter dated 25.02.2022, submitted certain documents along with a certificate from the Chartered Accountant. However, on 26.02.2022 the petitioner received the Order-in-Original No.03/2022-R, dated 24.02.2022, rejecting the refund claim for want of documents.

7.The contention of the petitioner is that the respondent has passed the impugned order without giving reasonable time to the petitioner for submission of documents and in fact, they had already submitted the requisite documents on 25.02.2002, as could be seen from Page No.76 of the typed set of papers. In Order-in-Original No.03/2022, dated 24.02.2022, at Paragraph No.20, it is recorded that the petitioner has not submitted any documents like, Chartered Accountant Certificate. The personal hearing date is also recorded in inner Page No.3. Thus, the Order-in-Original is without application of mind and further, the petitioner ought to have been called for enquiry and also given an opportunity to give their explanations.

8.The learned counsel for the petitioner further submits that the petitioner had received an refund order in his favour by the Assistant Commissioner, Kadappa, in Order-in-Original No.2/2021. Hence, he sought for quashing of the Order-in-Original on the ground that the same has been passed without application of mind.

9.The learned Standing Counsel appearing for the respondent submitted that as against the impugned Order-in-Original, dated 24.02.2022, an appeal should be filed within two months from the date of the said order before the Commissioner (Appeals), Tiruchirapalli. To agitate their grounds, it would be appropriate for the petitioner to file an appeal, wherein the documents and the factual submissions of the petitioner can be verified along with documents. Instead of approaching the appellate authority, the petitioner had filed this Writ Petition.

10.Considering the submissions and on perusal of the materials, it is seen that in the impugned Order-in-Original, at Page No.3, the personal hearing date is recorded as 19.01.2022. Further, as per the Acknowledgment produced by the petitioner, which is enclosed at Page No.76 of the typed set of papers, it is seen that the petitioner had submitted certain documents, in which, one of the documents is the Chartered Accountant Certificate, which has been enclosed as Annexure-C. Further, Statement of General Ledgers, original refund application, the order of the CESTAT and the details of the goods sold below M.R.P. on which excise duty was paid have also been enclosed. This being so, the impugned Order-in-Original dated 24.02.2022, has been passed denying the petitioner an opportunity of giving explanation for the queries raised. It is also to be seen at Page No.7 of the typed set of papers that there is a specific mention that the Chartered Accountant Certificate has not been produced, which would only go to show that the impugned Order-in-Original has been passed in a hasty manner without considering all the documents and giving an opportunity of being heard to the petitioner. In view of the same, this Court is of the view that the impugned Order-in-Original has been passed without application of mind. Further, the impugned order has been passed without considering the documents called for and submitted and also without giving an opportunity to the petitioner, which is in violation of principles of natural justice. Hence, the impugned order is set aside. The respondent is directed to give an opportunity of hearing to the petitioner and after considering all the documents, conduct an enquiry and thereafter, to pass orders in accordance with law. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is reminded that the said time limit is only an outer limit.

11.With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/No 18.07.2022

To

The Assistant Commissioner of GST and Central Excise,
Trichy II Division,
No.1, Williams Road, Cantonment,
Tiruchirapalli – 620 001.

M.NIRMAL KUMAR, J.

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