BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.393 to 399 of 2015

M/s.Sanmar Foundries Limited,
87/1, Vadugapatti Village,
Viralimalai 621 316,
represented by its Authorised Signatory,
J.Ramdas ... Petitioner in all WPs

/vs./

1.The Joint Secretary,
Government of India
Ministry of Finance,
No.14, Hudco Vishala Building,
B Wing, 6th Floor, Bikaji Cama Palace,
New Delhi 110 066.

2.The Commissioner of Central Excise,
Division II,
No.1, Williams Road,
Cantonment,
Trichy 620 001.

3.The Assistant Commissioner,
CGST and Central Excise,
Trichy.

(R3 has been suo motu impleaded
vide order dated 23.03.2022)
... Respondents WPs

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the first respondent herein in the impugned order No.103-141/14/cx dated 31.03.14 quash the same as rebate of excise duty cannot be denied on account of procedural lapse when substantial conditions have been satisfied and export has been accepted.

(In all cases)

For Petitioner : Mr.Manoj for
Mr.K.Vaitheeswaran

For Respondents : Mr.S.Ragavanthre
Junior Standing Counsel

COMMON ORDER

In all these writ petitions, the petitioner has challenged the impugned order of the 1st respondent as the Revisional Authority under Section 35 EE of the Central Excise Act, 1944 *(herein after referred to as 'Act').*

2.By the impugned order, the 1st respondent/Revisional Authority has disposed of 39 revision applications, wherein various orders passed by the Appellate Commissioner partly rejecting the petitioner’s rebate claim under Rule 18 of the Central Excise Rules, 2002 were rejected.

3.The case of the petitioner is that the petitioner had exported various goods and earlier a part of the rebate claim was allowed by the Deputy Commissioner. Thereafter, the petitioner preferred an appeal in respect of 39 different rebate claims before the Appellate Commissioner, who remitted the case back to the original authority to pass orders *de novo*. It is submitted that after the Appellate Commissioner had remitted some of the cases back to the respondents, fresh in Order in Originals were passed partly allowing and partly rejecting the rebate claim of the petitioner. These were subjected to further appeal before the Appellate Commissioner, who by separate orders in appeals had rejected the petitioner's rebate claims. Aggrieved by the same, the petitioner had filed 39 revision applications. In these writ petitions, the petitioner is concerned with 7 different revision applications, wherein the respondent has upheld the order of the Original Authority as confirmed by the Appellate Commissioner.

4.The learned counsel for the petitioner submits that the rebate is an export incentive given to an exporter and as long as imports are made, rebate cannot be denied. It is submitted that the petitioner has discharged the excise duty by debiting its Cenvat Credit Account and therefore as such rebates cannot be denied merely because there is a discrepancy in the export documents. It is submitted that the petitioner has indeed received foreign inward remittance and BRC (Bank Realization Certificate) have been furnished. Since these documents were not clear, the respondent has rejected the rebate claim.

5.Opposing the prayer, the learned counsel for the official respondent submits that these writ petitions are devoid of merits and are liable to be dismissed inasmuch as the Court is not concerned with the decision but the decision making process. It is submitted that no procedural irregularity has been pointed out to warrant interference. It is submitted that the 1st respondent has passed well reasoned orders, which require no further interference of this Court.

6.It is submitted that even if the petitioner is not entitled for rebate by way of cash refund, the petitioner is entitled for re-credit of the amount on the exports made and therefore, no prejudice would be caused to the petitioner in these writ petitions, which are liable to be dismissed.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

8.Refund of input tax credit on exports made under bond/LUT under Rule 5 of the Central Tax Credit Rules, 2004 and rebate under Rule 18 of the Central Excise Rules, 2002 is an export incentive given apart from the export incentive in the form of duty drawback under Section 75 of the Customs Act, 1962 r/w Customs, Excise and Service Tax Drawback Rules, 1995 as replaced by 2017 Rules apart from various export incentive that are given to an exporter under the provisions of the Foreign Trade Policy.

9.The order of the original authority after remand confirmed that the petitioner had indeed exported goods and therefore, the petitioner would be entitled for rebate. However, the portion of the rebate has been rejected on the ground that there is a mismatch in the Shipping Bill and From ARE-1.

10.It appears that the petitioner has not produced a clear copy of BRC. As far as this issue is concerned, the same is condonable and can be reexamined by the authorities. As far as the 2nd issue is concerned, ie., mismatch in the declaration in the Shipping Bill and Form ARE-1 filed, there can be co-relation with the export invoice of the petitioner.

11.The fact that the petitioner has made export is also not in dispute. Therefore, while granting rebate, the respondents have to examine to what extent the rebate can be granted to the petitioner. If there is a mistake in the ARE-1 filed, the Officer can scrutinize the Shipping Bill and the export invoice and other related document to conclude the excise duty paid at the time of exports and grant the rebate.

12.Therefore, the Original Authority/The Assistant Commissioner, CGST and Central Excise, Trichy is *suo motu* impleaded as 3rd respondent to verify the records to conclude that extent of rebate that can be granted.

13.Therefore, I set aside the respective impugned orders passed by the 1st respondent and remit the case back to the Original Authority/3rd respondent, who has been *suo motu* impleaded today by this Court, to re-examine the exported documents and to sanction the rebate claims of the petitioner to the extent rebate claims have not been sanctioned. The petitioner is directed to file a clean copy of BRC and give a proper explanation on the exports made through the Shipping Bill and the corresponding export documents including export invoice. The 3rd respondent shall examine and pass appropriate orders afresh on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. It is needless to state that the petitioner shall also be heard before passing such orders.

14.These writ petitions stand disposed of, in terms of the above observations. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Joint Secretary,
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Ministry of Finance,
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Trichy.

+1 CC to M/s.RADHIKA CHANDRASEKHAR, Advocate (SR-14602[F] dated 25/03/2022)

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-14631[F] dated 25/03/2022)

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RD(06.05.2022) 4P 6C