BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)Nos.11285 to 11287 of 2016

M/s.Xomox Sanmar Limited,
Represented by its Executive Vice President – Finance,
89/1 Vadugapatti Village,
Viralimalai, Trichy District. ... Petitioner in all W.Ps'

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. ... Respondents in all W.Ps'

(R3 has been *suo motu* impleaded vide order
dated 09.11.2022)

COMMON PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 1st Respondent herein in the impugned order Nos.21/2016-CX, 22/2016-CX and 23/2016-CX dated 28.01.2016, 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.

For Petitioner in all W.Ps	:	Mrs.Radhika Chandrasekaran
For Respondents in all W.Ps'	:	Mrs.S.Ragaventhree Junior Standing Counsel

COMMON ORDER

These Writ Petitions have been filed challenging the impugned orders dated 28.01.2016, wherein, rebate claims were rejected in view of certain discrepancies which were procedural defects and the substantiative conditions have been satisfied and the export is also admitted and thus unsustainable.

2. The learned counsel for the Petitioner has submitted the following table containing the reasons for rejection of rebate claims and also the remarks have been set out:

SL.No.	W. P. No.	Reason for rejection in OIA	Reason for denial of Rebate claim in the impugned order	Remarks
1	11285/2016	There is difference in weight mentioned in Airway Bill and ARE - 1	• Huge variation of weight and the Petitioner failed to give any valid reason for vast difference	• Air Freight has been charged by the Airline using their own scientific method of calculation. • The said method cannot be compared with the actual quantity. • The Airline calculates the charge using theformula viz., Length X breadth X height X number of packages then the resultant would be divided by 6,000/- • Airway bill contains to columns one for actual quantity and another quantity for freight. • The value shown in ARE – 1 has been realized there is no dispute there is no dispute regarding that. • When the factum of export is satisfied, the rebate claim cannot be denied the error is in the nature of procedural lapse which is condonable. • Substantial benefit cannot be denied on procedural lapse.

SL.No.	W. P. No.	Reason for rejection in OIA	Reason for denial of Rebate claim in the impugned order	Remarks
2.	11286/2016	• ARE-1 No. 1689 dt. 16.12.2010 weight is not matching with shipping bill / airway bill. • ARE-1 N o. 1668 dt 02.12.2010 vessel saling date is not correctly mentioned. • ARE-1 No.1681 dt 07.12.2010 flight number in ARE-1 under Part-B Certification is over written and does not tally with airway bill. • ARE – 1 No. 1708 dt. 22.12.2010 vessel number mentioned in ARE-1 under Part – B Certification does not tally with the Bill of Lading.	• No evidence were produced.	• The value shown in ARE – 1 has been realized there is no dispute regarding that. • When the factum of export is satisfied, the rebate claim cannot be denied the error is in the nature of procedural lapse which is condonable. • Substantial benefit cannot be denied on procedural lapse.

SL.No.	W. P. No.	Reason for rejection in OIA	Reason for denial of Rebate claim in the impugned order	Remarks
3.	11287/2016	• BL not produced with respect to ARE – 1 No. 1736 dt 30.12.2010. • Reasons for non – filing not explained.	• The Petitioner has not placed on record anything to the contrary. • Governement finds no infirmity in such detailed fining of Commissioner (Appeals).	• Bill of Lading in respect of the disputed ARE-1 was submitted along with application for rebate on 23.08.2011 and obtained acknowledgement from department. • When the factum of export is satisfied, the rebate claim cannot be denied the error is in the nature of procedural lapse which is condonable. • Substantial benefit cannot be denied on procedural lapse.

3. It is submitted by the learned counsel for the Petitioner that the rejections are basically procedural and it is not in dispute that the denial of rebate claim is only on the basis of the reasons stated in the Table above, which are procedural and thus cannot be sustained. She further submitted that, in similar circumstances, this Court, in W.P.(MD)Nos.393 to 399 of 2015 vide order dated 23.03.2022, remanded the matter back to the Original Authority to re-examine the export documents and to sanction the rebate

claims of the Petitioner to the extent rebate claims have not been sanctioned and the relevant paragraphs are extracted hereunder:

> *"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."

4. The learned Junior Standing Counsel for the Respondents would also submit that the above order of this Court squarely covers the issue and therefore, the matter can be remanded back to the Original Authority.

5. It is seen that the authority, who examined the above issue is the Original Authority / The Assistant Commissioner, CGST and Central Excise, Trichy, who is *suo motu* impleaded as 3rd Respondent, to which, the learned Junior Standing Counsel for the Respondents does not have any objection, as he is the appropriate authority to examine the rebate claims made by the Petitioner.

6. In view of the same, the impugned orders passed by the 1st Respondent in Order Nos.21/2016-CX, 22/2016-CX and 23/2016-CX respectively, dated 28.01.2016 are set aside and the matter is remanded back to the Original Authority / 3rd Respondent to re-examine the exported documents and to sanction the rebate claims of the Petitioner to the extent rebate claims have not been sanctioned, if such claim is in order. The Petitioner is directed to file a clean copy of Bank Realization Certificate (BRC) and give a proper explanation on the exports made through the Shipping Bill and the corresponding export documents including export invoice. The Original Authority / 3rd respondent shall examine and pass appropriate orders afresh on merits and in accordance with law within a

period of three 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.

7. Accordingly, these Writ Petitions stand disposed of, in terms of the above observations. No costs.

09.11.2022

Index : Yes / No
Speaking Order : Yes / No

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To

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MOHAMMED SHAFFIQ, J.

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