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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 29.08.2022*

\+ **W.P.(C) 4924/2021**

DISHA ENTERPRISES ..... Petitioner

Through: Mr Prabhat Kumar and Mr Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS [PREVENTIVE] & ORS. ..... Respondents

Through: Mr Ravi Prakash, CGSC with Ms Shruti Shivkumar, Ms Vidhi Jain, Mr Farman Ali and Ms Taha Yasin, Advs. for R-1 & 3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The only impediment, it seems, in refunding the amount which has accrued to the petitioner pursuant to the Order-in-Appeal dated 22.05.2020, revolves around the issue, as to which is the authority that is required to remit the amount.

2. Mr Ravi Prakash, who appears on behalf of respondent nos.1 and 3, informs us although refund sought has to be remitted to the petitioner, the only glitch is that the application for refund has not been preferred before the concerned authority i.e., the Principal Commissioner of Customs (Preventive), New Customs House, IGI Airport, New Delhi i.e., respondent

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no.1.

2.1. To be noted, the amount in issue i.e., Rs.4,16,755/- was deposited by the petitioner with respondent no.1.

3. Mr Prabhat Kumar, who appears on behalf of the petitioner, says that since the said amount was appropriated by the Additional Commissioner of Customs, Nhava Sheva, Maharashtra, the application for refund was moved before the said authority.

4. On the other hand, Mr Prakash relies upon a circular dated 16.09.2014 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs.

4.1. Based on the said circular, Mr Prakash says that the application had to be moved before respondent no.1 and had the application for refund been made to the said respondent, it would have been processed by him.

5. MrKumar, contends to the contrary and emphasizes that in the past, the appropriating authority had ordered for refund,whenever such an application had been moved.

6. According to us, having regard to the amount involved and given the fact that respondent no.1 is a party before us, the instant writ petition can be treated as an application and appropriate orders can be passed *qua* the same, by respondent no.1.

6.1. This, in fact, does not derogate from the provision engrafted in paragraph 7.1. of the circular dated 16.09.2014, on which Mr Prakash has placed much stress.

7. There is no dispute raised by the respondents that the Order-in-Appeal dated 22.05.2020 favours the petitioner.

7.1. There is also no dispute that the petitioner deposited the

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aforementioned amount while the investigation was on.

7.2. A copy of the challan 04.06.2010 evidencing the said payment is appended as Annexure-1 to the writ petition.

7.3. The amount indicated therein i.e., Rs. 7,30,913/-, which was deposited towards differential duty, includes the amount appropriated i.e., Rs 4,16,755/- by virtue of order-in-original dated 28.05.2019.

8. Accordingly, the writ petition is disposed of, with the following directions:

(i) Respondent no.1 will treat the writ petition as the petitioner's application for refund and pass appropriate orders for a refund of the aforementioned amount.

(ii) Respondent no.1 will also consider the petitioner's request for payment of interest from the date of deposit. In considering this aspect of the matter, regard will be had by respondent no.1 to the judgment dated 10.06.2020 rendered by a coordinate bench of this Court in W.P.(C) No.13114/2019, titled ***Team HR Services Pvt. Ltd. v. Union of India &Anr.***

(iii) The necessary orders will be passed by respondent no.1, within four weeks of receipt of a copy of the judgment.

9. List the matter for compliance on 22.11.2022.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

AUGUST 29, 2022
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