IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.11.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.4222 & 4223 of 2020

M/s. Brilliant Metals Pvt. Ltd., ...Petitioner in both W.Ps.

Rep. by its Director, Mr.Amit Gupta

Vs.

1. The Authorized Officer,
   J.Matadee Free Trade Zone,
   Mannur, Kancheepuram District,
   Sriperumudur.

2. The Commissioner of Customs (Chennai-import)
   Customs House, No.60 Rajaji Salai,
   Chennai – 600 001. ...Respondents in both W.Ps.

W.P.No.4222 of 2020

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records, pertaining to the impugned communication dated 27.01.2020 issued in F.No.FTWZ/1/2020 by the first respondent and to quash the same and further, to direct the first respondent to re-assess the Bill of Entry No.0002505 dated 17.02.2016, 001802 dated 05.02.2016 and 0002603 dated 10.02.2016 after extending the benefit of Notification No.45/2005-Customs dated 16.05.2005 (amended by Notification No.18/2011-Cus dated 01.03.2011.

W.P.No.4223 of 2020

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned public notice No.88/2019 dated 18.10.2019, issued in F.No.S.Misc.02/2018-19-AM-CH-II issued by the second respondent and to quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent-1 : Mr.Venkataswamy Babu
Senior Panel Counsel

For Respondent-2 : Mr.A.P.Srinivas,
Senior Standing Counsel

COMMON ORDER

Writ Petition No.4222 of 2020 is filed challenging the communication dated 27.01.2020 issued by the first respondent and to quash the same and further, to direct the first respondent to re-assess the Bill of Entry No.0002505 dated 17.02.2016, 001802 dated 05.02.2016 and

0002603 dated 10.02.2016 after extending the benefit of Notification No.45/2005-Customs dated 16.05.2005. Insofar as Writ Petition No.4223 of 2020 is concerned, the same is filed seeking to quash the public notice issued by the second respondent dated 18.10.2019.

2. Since the issue involved in both the Writ Petitions are inter-connected and the parties herein are one and the same, both the Writ Petitions were heard together and disposed of vide this Common Order.

3. The petitioner is a Company, registered under the provisions of the Companies Act. The petitioner-Company is engaged in the business of non-agricultural intermediate products, wastes and scrap. In terms of Notification No.45/2005-Cus dated 16.05.2005, the petitioner is entitled for exemption from payment of 4% additional duty levied under Section 3 (5) of the Customs Tariff Act, 1972 (hereinafter, referred to as 'C.A.Act') for clearance of the goods from SEZ to DTA area. The petitioner inadvertently, failed to claim such exemption, hence, they made an application for re-assessment and refund dated 20.01.2020, with the Authorized Officer/first respondent. The first respondent by virtue of the impugned communication dated 27.01.2020, stated as per the Public Notice No.88/2019, dated 18.10.2019, any modification of a self-assessed Bill of Entry is possible only by way of Appeal against the assessment made in the Bill of Entry before the Commissioner (Appeals) under Section 128 of the C.A. Act, 1962. Challenging the i) communication dated 27.01.2020 issued by the first respondent and ii) public notice No.88/2019 dated 18.10.2019, issued by the second respondent, the present Writ Petitions are filed respectively.

4. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner would contend that in terms of Notification dated 16.05.2005, the petitioner is entitled to claim exemption of duty at 4% for clearance of the goods from Special Economic Zone (SEZ) to Domestic Tariff Unit (DTA). However, since the petitioner inadvertently, failed to avail the benefit in respect of the goods cleared through Bill of Entry, he filed a modification application before the first respondent claiming 4% exemption of duty, but, the first respondent by the impugned order rejected the claim by stating that any modification of the self assessed Bills of Entry can be done only by way of Appeal, and that the said view is also confirmed by the Hon'ble Supreme Court in the case of **ITC Ltd., Vs Commissioner of Central Excise, reported in2019 (368) E.L.T. 216 S.C.**

4.1 The learned counsel contended that the respondent-Department had totally misunderstood and misinterpreted the view expressed by the Hon'ble Supreme Court, in the case cited supra, since, what the Hon'ble Supreme Court has clearly held that, in the event, if there is any modification of the Bill of Entry, he is not prevented from filing any such modification application and that any other modification of self assessment without modification of Bill of Entry came to be filed under Section 128 of C.A. Act, the remedy available against the rejection of any assessment is only by way of Appeal.

4.2 Further, the learned counsel relied on a decision rendered by this Court in the case of **M/s. Stanley Engineered Fastening India Pvt. Ltd. Vs. the Authorized Officer, and another, in W.P.No.8112 and 8113 of 2020, dated 09.03.2023,** wherein, at para Nos. 6 and 7, the decision of the

Hon'ble Supreme Court, cited supra, has been clearly interpretted and held as follows:-

""The question was answered adverse to the assessees stating that the applications for refund were not maintainable unless an order of self-assessment quantifying the duty had been the subject-matter of statutory remedy. Inter-alia, the Hon'ble Supreme Court states that such challenge may be by way of appeal under Section 128 or other relevant provisions of the Act. Paragraph 47 of the judgment is relevant in this context and is extracted below:-

> “47. When we consider the overall effect of the provisions prior to amendment and postamendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of selfassessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.”

7. To this extent, Public Notice No.88 of 2019 which states that 'no reassessment shall be allowed

unless the order of assessment including self assessment is duly modified by way of appeal' is incorrect as it places a restriction on the mode of reassessment. No restrictions was envisaged by the Hon'ble Supreme Court that has made it clear that the modification could be by way of statutory appeal or under relevant provisions of the Act. To this extent, the stipulation in public notice dated 15.10.2019, does not align with the ratio of the judgment of the Supreme Court."

4.3 Therefore, the learned counsel would submit that in the light of the ratio laid down by both the Hon'ble Supreme Court and this Court in **i) ITC Ltd and ii) M/s. Stanley Engineered Fastening India Pvt. Ltd.** (cited supra), the impugned order is liable to be set aside and the respondents may be directed to consider the modification application filed by the petitioner dated 01.01.2020 and make suitable modification in the Bill of Entry filed by the petitioner, so as to enable the petitioner to get their refund, to which, they are legally entitled to.

5. In response to the above submission, the learned Senior Standing Counsel for the respondents fairly admitted that the issue involved in the present Writ Petitions is squarely covered by the judgment/decision relied on by the learned counsel for the petitioner, which are referred to above.

6. Considered the submissions made by the learned counsel for the petitioner and the respondent and gone through the judgment/decision relied on by the learned counsel for the petitioner.

7. In the present case, it is seen that by virtue of Notification No.45/2005-Cus. dated 16.05.2005, the petitioner is entitled to claim exemption from payment of 4% additional duty levied under Section 3 (5) of the Customs Tariff Act, 1972 for clearance of the goods from SEZ to DTA area. But, what had happened in the present case is that, though in terms of the notification dated 16.05.2005, the petitioner is entitled to claim the benefit of 4% exemption of duty, due to inadvertent error, the column, where, the petitioner is required to fill up the claim for availing such exemption, has been left out/wrongly filled up, as a result, the petitioner was assessed without providing any exemption that is available to them, in terms of the Notification dated 16.05.2005. Therefore, unless and until, the petitioner had amended or modified the Bill of Entry in terms of provisions of Section 149 of the C.A. Act, the petitioner is not entitled to make any claim seeking exemption which is available in terms of the notification dated 16.05.2005. If the petitioner fails to claim the said exemption available under the said notification, certainly, the petitioner will be assessed, as if, he is not claiming 4% exemption of duty.

7.1 Therefore, unless or otherwise, Bill of Entry submitted by the petitioner with regard to the clearance of the goods from SEZ to DTA area, is modified/corrected, to which, the petitioner is entitled to by filing Application under Section 149 of the C.A.Act, the petitioner would not be entitled to avail the benefit available under the Notification dated 16.05.2005 for exemption.

7.2 Therefore, even assuming without admitting that, if the application filed by the petitioner for modification/correction of Bill of Entry was cancelled/rejected and the petitioner preferred any Appeal before the Appellate Authority, even then, the error committed by the petitioner while filing the Bill of Entry cannot be corrected, and the repondent-Department would proceed to assess, as if, the petitioner has not claim exemption. Therefore, for the purpose of getting exemption as per Notification dated 16.05.2005, it is necessary to get Bill of Entry modified/corrected by filing application under Section 149 of C.A. Act, and re-assessment has to be made by the Authorities concerned, in the event, the petitioner is entitled for refund claim.

7.3 In the present case, the petitioner has filed an application for refund on 14.09.2016 and in terms of Section 149 of C.A. Act, the petitioner also filed application dated for modification of the Bill of Entry. In such view of the matter, this Court is of the view that the impugned order passed by the first respondent is unsustainable and the same is liable to be set aside.

8. Accordingly, the Writ Petition No.4222 of 2020 is allowed, the impugned order dated 27.01.2020 is set aside and the first respondent is directed to consider the Modification Application filed by the petitioner dated 01.01.2020, and permit the petitioner to make corrections in the Bills of Entry and thereafter, re-assess the income of the petitioner, so as to enable the petitioner to claim refund, in terms of Notification No.45/2005 Cus. Dated 16.05.2005, which the petitioner claimed vide Application dated 14.09.2016.

9. Insofar as Writ Petition No.4223 of 2020 is concerned, wherein, the challenge is to the Public Notice issued by the second respondent dated 18.10.2019, which is also nothing but an outcome of wrong interpretation of the decision of the Hon'ble Supreme Court in **ITC Ltd's case** (cited supra), this Court is of the view that, in the light of the observations made in W.P.No.4222 of 2020, wherein, the issue as to whether the petitioner is entitled to file application under Section 149 of C.A. Act seeking for correction/modification of the Bill of Entry is decided in favour of the petitioner, the Public Notice impugned in W.P.No.4223 of 2020 has to be given a go by.

10. Accordingly, W.P.No.4223 of 2020 is also allowed and the impugned public notice dated 18.10.2019 is quashed.

11. In the result, both the Writ Petitions are allowed. No costs.

21.11.2023

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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W.P.No.4222 & 4223 of 2020

21.11.2023

W.M.P.No.4992 of 2020
in
W.P.No. 4223 of 2020

Krishnan Ramasamy,J.,

This Dispense Petition is ordered.

21.11.2023

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