BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.1220 of 2015

M/s. Sanmar Foundries Ltd.,
87/1, Vadugapatti Village,
Viralimalai – 621 316.
Represented by its Authorised Signatory,
J.Ramdoss. ... Petitioner

Vs

1.The Joint Secretary,,
Government of India, Ministry of Finance,
No. 14, Hudeo 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 - 1.

3.The Commissioner of Central Excise (Appeals), No.1,
Williams Road,
Cantonment,
Trichy - 1. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the first respondent herein in the impugned Order No.

103-141/14-cx dated 31.03.2014 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 and quash the Impugned order in Appeal No. 52/2014 dated 20.08.2014 passed by the third respondent herein.

For Petitioner : Mr.K.Vaitheeswaran Radhika
For Respondents : Mrs.Ragaventhree

O R D E R

The petitioner is a manufacturer of non-alloy steel castings, stainless steel castings and machined castings, which fall under Chapter 73 of the Central Excise Tariff Act, 1985. The petitioner is also an exporter. In view of the provision under Rule 18 of the Central Excise Rules 2002, this petitioner is entitled for rebate on excisable goods. The petitioner claims that he had paid the duty on excise on exciseable goods and filed an application for rebate as per Rule 18 of Central Excise Rules, 2002. The rebate claimed by the petitioner was processed by the adjudicating authority and by an order dated 28.09.2012, the adjudicating authority has sanctioned the rebate to the tune of Rs.27,71,590/-. As against the order of the adjudicating authority, the Assistant Commissioner of Central Excise has filed an appeal before the first Appellate Authority and the appeal filed by the Department was allowed by the Appellate Authority by order dated 20.08.2013. Challenging the order of the appellate authority, the petitioner has preferred a revision petition before the Joint Secretary/the first respondent herein. The Revisional authority has rejected the petitioner's representation by order dated 31.03.2014 and the same is under challenge in this writ petition.

2.Pending this writ petition, by referring the order passed by the first Appellate Authority, the third respondent has issued a notice on 20.08.2014 and therefore, the consequent notice is also challenged in this writ petition.

3.Today(18.10.2023), when this writ petition is taken up for hearing, the learned counsel on either side submits that this petitioner has also filed 38 other revision petitions and some of them were rejected by the revisional authority. As against that order, the petitioner has filed writ petitions in WP(MD) Nos.393 to 399 of

2015. The similar writ petitions filed as against the orders of the first respondent were decided by this Court in WP(MD) Nos.393 to 399 of 2015 by order dated 23.03.2022, wherein, the matter was remanded back for fresh consideration by the adjudicating authority and the relevant portion of the order is extracted as under:

> "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 re-examined by the authorities. As far as the second issue is concerned, i.e, mismatch in the declaration in the shipping bill was Form ARE -1 filed, there can be co-relation with the export invoice of the petitioner.
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> 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.
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> 12.Therefore, the original authority/The Assistant

Commissioner, CGST and Central Excise, Trichy is suo motu impleaded as third 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 first respondent and remit the case back to the original authority/third 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 third 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."

The learned counsel further submits that based on the above orders of this Court, the adjudicating authority has also passed an order in favour of the petitioner and therefore requested to remand this matter for fresh consideration.

4.Considering the decision taken by this Court in the similar writ petitions in WP(MD) Nos.393 to 399 of 2015, this writ petition is allowed and the impugned orders passed by the respondents are quashed and the adjudicating authority shall re-examine the documents as directed by this Court in W.P(MD) No. 393 to 399 of 2015, dated 23.03.2022. No costs.

18.10.2023

NCC: Yes/No
Index:Yes/No
Internet:Yes
vrn

To

1.The Joint Secretary,,
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B.PUGALENDHI, J.

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Order made in
W.P(MD)No.1220 of 2015

18.10.2023