IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28699-2018
Date of Decision:- 24.05.2023

M/s Sunrise Immigration Consultants Pvt. Ltd. ….Petitioner

vs.

Union of India and ors. ...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mukul Singla, Advocate
For the petitioner

Mr. T.K. Joshi, Sr. Panel counsel
For the respondents.

Ritu Bahri, J.

The present petition under Article 226/227 of the Constitution of India is for issuance of writ in the nature of mandamus, for issuance of direction to the respondent Nos. 2 and 3 to sanction refund of Rs.24,39,600/- along with interest, as learned Tribunal, vide order dated 16.03.2018 (P-2) allowed the appeal of the petitioner.

On 17.01.2019, this Court passed the following order:-

> *"Learned counsel for the parties submitted that so far as refund of the principal amount i.e. 24,39,600/- is concerned, the same has been refunded to the petitioner*
>
> *The dispute is now regarding payment of interest under Section 35FF of Central Excise Act, 1944 as made applicable to UT, Chandigarh also.*
>
> *Learned counsel for the respondents prays for time to seek instructions.*
>
> *Adjourned to 26.02.2019."*

On notice of the petition, a reply dated 03.04.2019 has been filed on behalf of respondent Nos. 1 to 3 stating therein that the competent authority vide its order dated 03.01.2019 decided the application of the petitioner and sanctioned the refund claim of Rs.24,39,600/- as per rules. However, his claim for grant of interest has been declined. It has been submitted that Section 35FF of the Act provides for payment on interest on the amount deposited by an assessee under Section 35F of the Act. The petitioner in the present case has not deposited any amount under Section 35F of the Act. Further Section 35FF of the Act was substituted w.e.f 06.08.2014 by Section 106 of the Finance (No. 2) of 2014. The amount was deposited by the petitioner during investigation before the said date. Thus, the petitioner is not entitled to get any interest as per Section 35FF of the Act.

It has been further stated that after receipt of documents like export invoice and FIRC from the petitioner on 07.12.2018, the refund claim has been processed. Thus due to furnishing of requisite documents on 07.12.2018 by the petitioner, the refund sanction order was passed on 03.01.2019 by following the department procedure including pre-audit requirement.

Further it has been stated that the Adjudicating Authority vide Order- in-Original No. CPD-CEX-001-COM-31-2015 dated 25.03.2015 confirmed the demand of Service Tax of Rs. 89,34,080/-. Out of this an amount of Rs. 48,77,602/- already deposited by the petitioner during the course of investigation was appropriated. The balance amount of Rs. 40,66,478/- was to be recovered from the petitioner alongwith interest. The amount of Rs. 5,00,201/- deposited as interest by the petitioner was appropriated against the total liability of interest recoverable from the petitioner. A penalty was imposed amounting to Rs. 89,34,080/- under Section 78 of the Finance Act, 1994 and Rs. 10,000/- under Section 77 of the Act.

The petitioner then filed an appeal before Customs, Excise and Service Tax Appelalte Tribunal Chandigarh and vide order dated 16.03.2018, the appeal was allowed and it was observed that the services provided by the tax payer do not fall under the ambit of the definition of "intermediary services" given under Rule 2 (f) of the POPS Rules, 2012 does not appear to be correct.

Learned counsel for the petitioner at this stage has referred to judgment of Riba Textile Ltd vs. Commissioner of CE and ST, Panchkula, passed in Excise Appeal No. 60446-2018, decided on 07.01.2020 whereby the appeal was allowed by referring to the judgment of ***Hon'ble the Supreme Court in a case of Sandvik Asia Ltd vs. CIT, Pune 2007 (8) STR 193*** appellant was held entitled to claim the interest on delay refund from the date of deposit till realization.

The revenue then file an appeal before this Court, vide ***CEA No. 8-2022,which was dismissed on 14.03.2022*** wherein it was held that it is not disputed that the provisions of Income Tax Act, 1961 and Central Excise Act, 1944 are *pari materia* and therefore, law laid down by Hon'ble the Supreme Court in the case of ***Sandvik Asia Ltd (Supra)*** shall be applicable to the present case.

In the facts of the present case, **the petitioner deposited a sum of Rs.43,75,786 which includes a sum of Rs.24,39,600/- on the referral services. The tax was deposited during investigation**. It is not in dispute that the Tribunal vide order dated 16.03.2018 allowed the appeal of the assessee and the petitioner was not held liable to pay service tax on referral services. Hence the petitioner is entitled to refund of Rs.24,39,600/- along with interest. The amount was deposited during investigation in the year

2018. The show cause notice was issued on 20.10.2014 after conducting investigation. Hence, as per the above mentioned judgment, the petitioner is entitled for refund from the date of deposit of the amount since the date of investigation.

Applying the ratio of the above mentioned judgment to the facts of the present case, the present petition is allowed and direction is given to the respondents to refund the above mentioned amount ie. Rs.24,39,600/- along with interest @9% w.e.f October, 2014 till the payment is made.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

24.05.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No