IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

W.P.No.36924 of 2007

M/s.Salem Co.op Sugar Mills Ltd
Mohanur 637 015
Namakkal District
Represented by its Special Officer Mr.M.Fernandez ... Petitioner

Vs

1. The Customs, Central Excise and Service Tax Appellate Tribunal
   South Zonal Bench
   Shastri Bhawan Annexe
   26 Haddows Road
   Chennai 600 006.

2. The Commissioner of Central Excise
   No.1 Foulks Compound
   Anaimedu, Salem 636 001.

3. The Asst. Commissioner of Central Excise
   Salem II Division
   No.2 Valmiki Street
   Subramaniya Nagar
   Salem 636 005 ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorified Mandamus calling for the records pertaining to order of the 1st respondent vide Misc.Order No.649/07 & Final Order No.1015/07 dt.14.8.2007 quash the same and further direct the 1st respondent to condone the delay in preferring the appeal and take on file the appeal and dispose the same on merits.

For Petitioner : Mr.Sethu Prabakaran
for Mr.Hari Radhakrishnan

For Respondents : Mr.S.R.Sundar (for R2 and R3)
R1 - Tribunal

O R D E R

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner is the Salem Cooperative Sugar Mills and had suffered an order-in-original dated 28.07.2006 rejecting its plea for refund, which had been carried in appeal before the Commissioner of Central Excise (Appeals), Salem. The first appellate authority had decided adverse to the petitioner vide order dated 11.12.2006, as against which, the petitioner approached the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), albeit, belatedly with a delay of 80 days.

2. The order challenged before this Court is a final order of the CESTAT dated 14.08.2007 dismissing the appeal on the ground that there is no justification for the delay.

3. A preliminary objection on maintainability is tentatively put forth by the learned counsel for the respondents drawing attention to a decision of this Court in *Metal Weld Electrodes V. CESTAT, Chennai* (2014 (200) ELT 3 (Mad.)). That order had decided a batch of Writ Petitions challenging orders passed by the CESTAT and

had rejected the same on the ground of maintainability. The Bench noted that the Central Excise Act, 1944 contained an in-built appellate hierarchy and hence any order of the CESTAT would be amenable only to appeal before the Division Bench of this Court.

4. There has been a subsequent development, in that, V.Ramasubramanian, J (as he then was), speaking for the Division Bench of this Court in *Tiruchitrambalam Projects Ltd. V. CESTAT, Chennai* (2016 (43) STR 531) took the view that a Writ Petition was maintainable in exceptional cases, though only before the Division Bench.

5. His Lordship had earlier expressed the same view in the Telangana High Court in *Kalathil Brothers Construction Co. Pvt. Ltd. V. C.C.E.S.T. & C., Visakhapatnam – II* (2019 (368) ELT 391).

6. The ratio of the above orders are consistently followed and intervention in orders of the Tribunal sparingly permitted under Article 226 of the Constitution of India, provided that the matter is heard by a Division Bench and that exemplary cause is made out by the Writ Petitioner.

7. In the present case, the lis relates to refund of duty paid. The petitioner is a Cooperative Society engaged in the manufacture of sugar and molasses. It also runs a distillery and clears molasses to that unit on payment of duty. On account of the amendment made on 01.03.2005 to the effect that molasses was not taxable, the

liability to such duty ceased. However, the petitioner continued to pay duty for the period 01.03.2005 to 31.12.2005 and then sought refund/re-credit of the same by way of a claim. That claim was rejected under order-in-original dated 28.07.2006.

8. Before the Appellate Commissioner, the petitioner modified its claim to a refund of the amount paid in excess of the amount payable in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004. The appeal was also rejected on 11.12.2006, as against which, the petitioner filed second appeal with a delay of 80 days.

9. A detailed affidavit setting out reasons for seeking condonation was filed before the CESTAT. The Tribunal however declined to condone the delay dismissing the appeal in limine, as against which the present appeal is filed.

10. On a perusal of the reasons ascribed to the delay as well as for the reason that the petitioner is a Cooperative Society, which agitates the grant of refund of Rs.32.00 lakhs (approx.), this Writ Petition is allowed setting aside the impugned order of the CESTAT and restoring the matter to the file of the CESTAT.

11. Incidentally, Mr.Sundar, learned counsel for the respondents does not very seriously object to the relief as granted aforesaid. Since the appeal itself is of the year 2007, we fix the date of hearing of the appeal as 09.09.2024 and the CESTAT is requested to take the appeal in E/Appeal No.394 of 2007 for hearing on that date.

12. This Writ Petition is allowed in terms of this order. No costs.

(A.S.M.,J) (G.A.M.,J)
13.08.2024

Index:Yes/No
Speaking order/Non-Speaking Order
Neutral Citation: Yes/No
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To

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