IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9730 of 2022

M/s.Sterling Petrochem,
Represented by its Managing Partner
Shri V.Amit Chokhani ... Petitioner

Vs.

The Assistant Commissioner of Customs (Refunds-II),
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Letter dated 17.02.2022 of the respondent in F.No.1/2021-Refunds and further direct the respondent to sanction refund of redemption fine and penalty as claimed by the petitioner vide letter dated 31.01.2022 along with interest within a reasonable time frame.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.Umesh Rao.K
Senior Standing Counsel

ORDER

This Writ Petition is of the year 2022.

2. The petitioner has challenged the Impugned Communication/Letter dated 17.02.2022 of the respondent. It reads as under:-

> *"Please refer your letters dated 31.01.2022 on the above subject.*
> *In this regard it is informed that vide Order-in-Appeal No.1018/2020 dated 19.11.2020, the Commissioner of Customs (Appeal-II) has set aside the impugned order passed by the assessment group and remanded the case back to LAA. Hence you are requested to approach the concerned group for further action.*
> *In view of the above, the refund claim filed by you is returned as untenable. If the claim is re-submitted with the proper order, it will be considered as fresh claim."*

3. The petitioner had earlier suffered Order-in-Original No.69859 of 2019 dated 02.07.2019 in the hands of the Additional Commissioner of Customs (GR-1), Chennai. By the said Order, the petitioner was subjected to redemption fine of Rs.5,30,000/- under Section 125 of the Customs Act, 1962 and penalty of Rs.3,60,000/- under Section 112(a) of the Customs Act, 1962.

4. Aggrieved by the same, the petitioner had filed an appeal before the

Commissioner of Customs (Appeals-II), Chennai, who by an order dated 19.11.2020 vide Order-in-Appeal Seaport C.Cus.II No.1018/2020, had set aside the aforesaid Order-in-Original No.69859 of 2019 dated 02.07.2019, passed by the Additional Commissioner of Customs (GR-1), Chennai and remitted the case back to the Additional Commissioner of Customs (GR-1), Chennai to pass a fresh order.

5. The aforesaid order was to be passed following the principles of natural justice.

6. Since no time limit was specified, no orders have been passed in the above *de novo* proceedings by the Additional Commissioner of Customs (GR-1), Chennai.

7. Under these circumstances, the petitioner has been written letters repeatedly asking the Additional Commissioner of Customs (GR-1), Chennai to pass a fresh order pursuant to the directions of the Commissioner of Customs (Appeals-II), Chennai dated 19.11.2020.

8. Since nothing moved forward, the petitioner has filed an application for refund on 31.01.2022, which has been now returned directing the petitioner to approach the concerned group for further action.

9. Counter Affidavit has been filed on behalf of the respondent. In Paragraphs 7 to 9 of the Counter Affidavit, it has been stated as follows:-

> "7. With respect to Ground E, the refund claim was pre-mature. Assessment group is yet to pass Denovo Order in compliance with the Order in Appeal passed by the Commissioner of Customs (Appeals). Without Denovo Order, Refund does not arise for Redemption Fine & Penalty Proceedings and the claimant has filed a pre-mature refund claim before Assistant Commissioner, Refunds for refund of Redemption Fine & Penalty Proceedings. Moreover while returning the refund application as pre-mature, the importer was advised to approach the Assessment group and to file the refund claim after due compliance of Order in Appeal passed by Commissioner of Customs (Appeals). In such scenario refund does not arise and hence was rightly returned as pre-mature.
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> 8. The Apex Court vide its judgment in the case of M/s.ITC Ltd., dated 18.09.2019 held that
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> > "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 self-assessment 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."

9. In view of the above, the refund claim was not taken up for processing and claimant was requested to approach the concerned Assessment Group."

10. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent, having considered the affidavit filed in support of the present writ petition and the Counter Affidavit filed on behalf of the respondent, this Court directs the respondent to process the refund claim filed on 31.01.2022 for refund of redemption fine and penalty paid by the petitioner pursuant to Order-in Original No.69859 of 2019 dated 02.07.2019, passed by the Additional Commissioner of Customs (GR-1), Chennai.

11. Needless to state, refund is without prejudice to the rights of the respondent to levy any fine or redemption fine independently pursuant to the remand order.

12. It is expected that the refund claim will be processed within a period of thirty days from the date of receipt of a copy of this order.

13. This Writ Petition is disposed of with the above observations and directions. No costs.

23.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Assistant Commissioner of Customs (Refunds-II),
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

C.SARAVANAN, J.

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