IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.36159 of 2023 &
W.M.P.No.36124 of 2023

M/s.Omya India Private Limited,
Represented by its Customs Service Manager,
Mrs.Vrinda Mule,
602A, 6th Floor, Godrej Two,
Eastern Express Highway,
Pirojshanagar,Vikhroli (East),
Mumbai, Maharashtra - 400 079. ... 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 praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned letter dated 17.08.2023 in F.No.S.Misc.01/2023-Refunds-II of the respondent and quash the same as illegal and consequently direct the respondent to sanction the refund along with interest.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.H.Siddarth
Junior Standing Counsel

ORDER

The petitioner has come up with this writ petition to quash the order dated 17.08.2023 and consequently, direct the respondent to sanction the refund along with interest.

2. The learned counsel for the petitioner submits that on 12.03.2020 and 13.03.2020, the petitioner company had imported five import consignments through Port of Chennai containing "CALCIUM CARBONATE OMYACARB" from Malaysia, for processing the manufacture of finished goods. They filed the bills of entry for home consumption and paid customs duty online through ICEGATE System, as per the assessment order passed by the Assistant Commissioner of Customs (Group-2). However, the duty paid by the petitioner for the first time did not reflect in the ICEGATE system, which necessitated them to pay the duty for the second time. The learned counsel further submits that on account of covid 19 pandemic, the Government of India's nationwide lockdown beginning on 24.03.2020, which was extended periodically with restrictions and relaxations, the petitioner company did not receive the refund for the excess duty paid to the Customs Department. Even after lifting of the restrictions, no refund was made until August 2023. Hence, the petitioner made refund applications, which were rejected by the

respondent by the order impugned herein, on the ground that they were time-barred as per Section 27 of the Customs Act, 1962. Placing reliance on the judgment of the Division Bench of this Court in ***3E Infotech Vs. CESTAT, Chennai*** *[2018 (18) GSTL 410 (Mad.)*, where a similar issue arose under Section 11B of the Service Tax Act and it was held therein that the time limitation for claiming a refund under that provision did not apply when the tax was paid by mistake, the learned counsel submitted that the said ruling will apply to the present case falling under Section 27 of the Customs Act and hence, the writ petition will have to be allowed by setting aside the order passed by the respondent.

3. *Per contra,* the learned Junior Standing Counsel for the respondent submits that the Division Bench's decision pertains to service tax, while the present case relates to customs duty under Section 28 of the Customs Act and hence, the order passed by the respondent is perfectly right and no interference is required. He further submits that an alternative remedy before the appellate authority is available to the petitioner.

4. I have given careful consideration to the submissions and perused the materials on record.

5. It is not disputed that the petitioner had paid customs duty twice in connection with the bills of entry for the five consignments imported on 12.03.2020 and 13.03.2020. However, refund claim made by them was rejected by the respondent as time barred.

6. The crux of the argument made by the counsel for the petitioner is that the limitation under Section 27 of the Customs Act does not apply when the duty was paid by mistake and hence, the respondent may be directed to consider the claim of the petitioner seeking refund.

7.For better appreciation, Section 27 of the Customs Act is reproduced below:

> *" [27. Claim for refund of duty.--]*
> *"(1) Any person claiming a refund of any duty or interest:*
> *(a) paid by him; or*
> *(b) borne by him,*
> *may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner or Deputy Commissioner of Customs, before the expiry of one year from the date of payment of such duty or interest."*

A plain reading of the aforesaid provision would reveal that a refund application must be made within one year from the date of payment. However, it does not specify that this limitation applies when the duty was paid by mistake. In similar circumstances, in respect of a service tax matter, the Division Bench of this Court, in ***3E Infotech vs. CESTAT, Chennai*** *(supra)*, held that limitation period would not apply where the tax was paid by mistake. The relevant portion of the said judgment is extracted hereunder:

> *" 13. On an analysis of the precedents cited above, we are of the opinion, that when service tax is paid by mistake a claim for refund cannot be barred by limitation, merely because the period of limitation under Section 11B had expired. Such a position would be contrary to the law laid down by the Hon'ble Apex Court, and therefore we have no hesitation in holding that the claim of the Assessee for a sum of Rs.4,39,683/- cannot be barred by limitation, and ought to be refunded."*

However, the learned Junior Standing Counsel appearing for the respondent strongly opposed the claim made by the petitioner by contending that the aforesaid judgment is not applicable to the present case, as it pertains to the Customs Act.

8. To appreciate the aforesaid contention, it would be useful to refer to Section 11B of the Central Excise Act, which reads as under:

> *"11.B. Claim for refund of duty: (1) Any person claiming duty of excise may make an application for refund of such to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in*

section 12A) as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person;

A combined reading of the aforesaid provisions viz., Section 11B of the Central Excise Act and Section 27 of the Customs Act would reveal that both the provisions operate in the same manner with respect to claims for refund of duties. They clearly stipulate that a refund claim must be made within one year from the date of payment, and the procedure to be followed for filing such claims. However, neither of the provisions explicitly addresses the ;situations under which the duty or tax was paid by mistake. Therefore, the legal principle laid down by the Division Bench in the decision referred to above, that the limitation period does not bar a refund claim when the duty or tax was paid by mistake, squarely applies to the present case. In that view of the matter, the rejection of the petitioner's claim for refund on the ground of limitation, cannot be allowed to be sustained.

9. Accordingly, the order impugned herein is set aside and the matter is remanded to the respondent for reconsideration. The respondent shall re-consider the application for refund filed by the petitioner after affording an opportunity of personal hearing and pass necessary orders within a period of four weeks from the date of receipt of a copy of this order.

10. This writ petition stands disposed of in the above terms. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

28.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
r n s

To

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

KRISHNAN RAMASAMY.J.,

r n s

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