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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos. 15366 to 15369 & 15653 to 15661 of 2021
and
W.M.P.(MD) Nos.12602 to 12609, 12261, 12262 & 12265 of 2021

W.P.(MD) No.15366 of 2021

M/s.Sanmar Foundries Ltd.,
(Now Known as Sanmar Matrix Metals Ltd.)
Rep. by its President – Finance K.Jaishree,
No.87/1, Vadugapatti Village,
Viralimalai,
Pudukottai District – 621316. ... Petitioner

Vs.

1.Ministry of Finance Department of Revenue,
The Principal Commissioner & Ex-Officio,
Additional Secretary to Government of India,
8th Floor, World Trade Centre,
Kuffe Parade, Mumbai – 400 005.

2.The Commissioner of GST & Central Excise,
No.1, Williams Road,
Cantonment, Trichy – 620001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the first respondent in the impugned Order No.15-18/2021-CEX(SZ) / ASRA/

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MUMBAI dated 11.01.2021 and quashing the same as it has been passed travelling beyond the scope of revision petition under Section 35EE of the Central Excise Act, 1944 against the order passed by the First Appellate Authority rejecting the claim of rebate on account of the pendency of adjudication of Show Cause Notice No.22/2013 dated 29.11.2013.

For Petitioner in all W.Ps.	: Mrs.Radhikha Chandrasekar
For R1 in W.P.(MD)Nos. 15366 to 15369/2021	: Mr.G.Vidhyamaheswaran Central Government Standing Counsel
For R1 in W.P.(MD)Nos. 15653 to 15661/2021	: Mrs.Deepa Standing Counsel
For R2 in all W.Ps.	: Mr.Ragavendren Standing Counsel

*****

COMMON ORDER

By this common order, all these 13 Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the respective impugned orders passed by the first respondent as the Revisional Authority under Section 35EE of the Central Excise Act, 1944.

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By the impugned order, the first respondent has rejected the Revision Petitions filed by the petitioner against the respective Orders-In-Appeals dismissing the appeals filed by the petitioner against the respective Orders-In-Originals rejecting the rebate claims filed by the petitioner under Rule 18 of the Central Excise Rules, 2002 read with relevant Notifications issued thereunder.

3. The rebate claim was initially rejected by the Original Authority on the ground that the petitioner had wrongly availed Cenvat Credit on "Stainless Steel Casting" and "Non-Alloyed Steel" under the Cenvat Credit Rules, 2004 and therefore, the petitioner was not entitled to utilize the Cenvat Credit wrongly availed for discharging duty liability on the exported goods to claim rebate under Rule 18 of the Central Excise Rules, 2002 read with relevant Notifications.

4. The exports in question were made during various months in 2010, 2011 and 2012. The details of the exports made and the impugned orders denying the claim amount and the disputed amount are as follows:-

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Sl. No	W.P. (MD) No	Revisional Authority File Ref.	Impugned Order	Month	Claim Amount	Disputed Amount
1	15366/21	195/111/14	15-18	May, 2010	75,76,990	68,23,139
2	15367/21	195/112/14	15-18	October, 2010	1,01,95,111	46,75,590
3	15368/21	195/113/14	15-18	February, 2012	13,29,837	23,537
4	15369/21	195/114/14	15-18	March, 2012	79,93,565	40,22,658
5	15653/21	195/104/14	19-27	April, 2012	17,48,991	17,48,991
6	15654/21	195/100/14	19-27	September, 2012	75,44,164	75,44,164
7	15655/21	195/101/14	19-27	April, 2012	4,44,503	4,44,503
8	15656/21	195/102/14	19-27	March, 2012	18,89,223	18,89,223
9	15657/21	195/103/14	19-27	September, 2012	30,01,680	30,01,680
10	15658/21	195/105/14	19-27	May, 2012	25,39,564	25,39,564
11	15659/21	195/106/14	19-27	May 2012	23,07,633	23,07,633
12	15660/21	195/107/14	19-27	February, 2012	8,61,840	8,61,840
13	15661/21	195/108/14	19-27	December, 2011	8,10,610	8,10,610
Total					**4,82,43,711**	**3,66,93,132**

5. While the rebate claims filed by the petitioner were being considered by the Original Authority, the Department has initiated investigation and had collected approximately Rs.7.53 Crores from the petitioner on 24.09.2012, 25.09.2013 and 25.10.2023.

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6. Aggrieved by the action of the respondents, the petitioner rushed to this Court in W.P.(MD) No.2026 of 2013. By an order dated 08.11.2013, this Court has dismissed the said Writ Petition with the following observations:-

> "*9. In view of the above, this writ petition is disposed of with the following directions:*
>
> *(a) the investigating authority shall complete the investigation and thereafter, show cause notice shall be issued by the Quasi Judicial Authority viz., the first respondent herein, on or before 30.11.2013.*
>
> *(b) The petitioner shall, thereafter, submit objections, if any, along with the documents within five days.*
>
> *(c) It is further directed that after the submission of the objections and the documents, by the petitioner, the Quasi Judicial Authority shall afford sufficient opportunity to the petitioner and pass final adjudication order within a period of one month thereafter.*
>
> *(d) It is further directed that subject to the outcome of the final order, the above said sum of Rs. 7.53 crores paid by the petitioner shall be either refunded or adjusted towards the duty, however, subject to the appeal remedy.*"

7. As consequence of the above order, the Department has also issued Show Cause No.22/2013-CEX dated 29.11.2013. Meanwhile, the petitioner had filed W.A.(MD) No.339 of 2014 and challenged the

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aforesaid order dated 08.11.2013 passed by the leaned Single Judge in W.P.(MD) No.2026 of 2013.

8. The said Writ Appeal filed by the petitioner was allowed by the Division Bench of this Court on 30.04.2014. Relevant paragraphs of the said order dated 30.04.2014 of the Division Bench of this Court in W.A. (MD) No.339 of 2014 read as under:

> "*6. Assailing the order of the learned Judge, the appellant come up with the above writ appeal. When the writ appeal came up for admission on 27.02.2014, the learned Standing Counsel for the respondent took notice and after hearing him, a Division Bench of this Court allowed the writ appeal, by an order dated 27.02.2014.*
>
> *7. However, the respondent filed an application in Review Application (MD) No.61/2014 for a review of the order passed on 27.02.2014 in W.A.(MD) No. 339 of 2014. The review was allowed by us by a separate order passed on 26.04.2014, only on the short ground that the appeal of the appellant could not have been allowed at the admission stage, without sufficient opportunity to the respondents. Consequently, the writ appeal got re-opened and the counsel on both sides advanced arguments in the appeal.*"

9. Ultimately, the Division Bench of this Court has concluded as follows:-

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> "*21. The writ appeal is allowed, the order of the learned Judge is set aside and the writ petition filed by the appellant is allowed, directing the respondents to refund the amount of Rs.7.53 crores, collected from the appellant. We give a time of four weeks to the respondents to make payment of the amount to the appellant, from the date of receipt of a copy of this order. If the respondents fails to make payment within four weeks from the date of receipt of a copy of this order, the respondents will become liable to pay interest at 6% per annum of the said amount from the date of expiry of the time for payment stipulated herein. No costs. Connected M.P.(MD) No.1 of 2014 is closed.*"

10. Since the Show Cause No.22/2013-CEX dated 29.11.2013 was issued pursuant to the order of the learned Single Judge dated 08.11.2013 in W.P.(MD) No.2026 of 2013 which stood reversed by the Division Bench of this Court *vide* order dated 30.04.2014 in W.A.(MD) No.339 of 2014, the petitioner challenged the said Show Cause Notice in W.P.(MD) No.4296 of 2014. This Court *vide* its order dated 21.08.2014 dismissed the said Writ Petition.

11. The petitioner thereafter challenged the aforesaid order of the learned Single Judge dated 21.08.2014, in W.A.(MD) No.1151 of 2014. The Division Bench of this Court taking note of the above development

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allowed the Writ Appeal on 17.11.2022 and thereby quashed the Show Cause No.22/2013-CEX dated 29.11.2013 issued pursuant to the order dated 08.11.2013 passed by the leaned Single Judge in W.P.(MD) No. 2026 of 2013. Thus, there were no other grounds to deny the rebate claims to the petitioner.

12. The further appeal of the Department before the Hon'ble Supreme Court was also dismissed *vide* order dated 05.03.2024 in SLP (Civil) Diary No.48923 of 2023 as there was enormous delay in filing the said appeal.

13. Thus, the issue relating to Cenvat Credit availed by the petitioner on “Stainless Steel Casting” and “Non-Alloyed Steel” stands confirmed in favour of the petitioner in view of the orders passed by the Division Bench of this Court in W.A.(MD) No.339 of 2014 on 30.04.2014 and in W.A.(MD) No.1151 of 2014 on 17.11.2022. Thus, the rebate of Cenvat Credit utilized on exports made by the petitioner cannot be denied as the Cenvat Credit that was availed by the petitioner is deemed to be validly availed and utilized for discharging excise duty lability on the exports covered by various rebate claims.

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14. In view of the above developments, the rejection of rebate claims cannot be sustained. Therefore, these Writ Petitions deserve to be allowed. Thus, the impugned orders of the first respondent seeking to deny rebate claims of the petitioner are quashed. Consequently, all the orders of the lower authorities are also quashed to the extent they deny rebate claims to the petitioner. The second respondent or his subordinate officer is therefore directed to finalize the rebate claims and issue necessary pay order including the interest on the delayed payment of rebate claims, to the petitioner, as expeditiously as possible, preferably, within a period of 6 months from the date of receipt of a copy of this order.

15. Accordingly, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.06.2024

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

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Additional Secretary to Government of India,
Ministry of Finance Department of Revenue,
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