



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.06.2024

Pronounced on : 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.17429 to 17433 of 2022

and

W.M.P.(MD) Nos.12694, 12698, 12696, 12697 and 12699 of 2022

M/S.Indian Ocean Garnet Sands Company P Ltd,
represented by its Managing Director,
M.Ramesh

... Petitioner in all W.Ps.,

/vs./

- 1.Principal Commissioner,
(Revision Authority),
Ex Officio Additional Secretary to the Govt of India,
8th Floor, World Trade Centre,
Cuffe Parade,
Mumbai 400 005.
- 2.The Commissioner of Central Excise (Appeals),
Circuit Office, 4 LBS Marg,
C.R.Building,
Madurai 625 002.
- 3.The Assistant Commissioner of Central Tuticorin Division,
Madurai GST & CEC Commissionerate



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C-50, SIPCOT Industrial Complex,
Tuticorin -8.

... Respondents in all W.Ps.,

PRAYER in W.P.(MD) No.17429 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the First respondent in his order No. 33/2022-ST (SZ)/ASRA/MUMBAI (Common Order Nos. 33-39/2022-ST (SZ)/ASRA/MUMBAI) dated 19.04.2022 (issued on 21.04.2022) in F.No. 196/14-16/SZ/2018-RA/1476 and F.No. 196/16-19/SZ/2019 and quash the same and consequently direct the third respondent to sanction the rebate /refund amount of Rs. 4,04,170/- dated 11.05.2017 under Notification No. 41/2012 (ST) dated 29.06.2012, within a time frame as may be fixed by this Court.

PRAYER in W.P.(MD) No.17430 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the First respondent in his order No. 37/2022-ST (SZ)/ASRA/MUMBAI (Common Order Nos. 33-39/2022-ST (SZ)/ASRA/MUMBAI) dated 19.04.2022 (issued on 21.04.2022) in F.No. 196/14-16/SZ/2018-RA/1476 and F.No. 196/16-19/SZ/2019 and quash the same and consequently direct the third respondent to sanction the rebate /refund amount of Rs. 3,94,131/- dated 28.02.2019 under Notification No. 41/2012 (ST) dated 29.06.2012, within a time frame as may be fixed by this Court.



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PRAYER in W.P.(MD) No.17431 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the First respondent in his order No. 35/2022-ST (SZ)/ASRA/MUMBAI (Common Order Nos. 33-39/2022-ST (SZ)/ASRA/MUMBAI) dated 19.04.2022 (issued on 21.04.2022) in F.No. 196/14-16/SZ/2018-RA/1476 and F.No. 196/16-19/SZ/2019 and quash the same and consequently direct the third respondent to sanction the rebate /refund amount of Rs. 6,22,060/- dated 11.05.2017 under Notification No. 41/2012 (ST) dated 29.06.2012, within a time frame as may be fixed by this Court.

PRAYER in W.P.(MD) No.17432 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the First respondent in his order No. 34/2022-ST (SZ)/ASRA/MUMBAI (Common Order Nos. 33-39/2022-ST (SZ)/ASRA/MUMBAI) dated 19.04.2022 (issued on 21.04.2022) in F.No. 196/14-16/SZ/2018-RA/1476 and F.No. 196/16-19/SZ/2019 and quash the same and consequently direct the third respondent to sanction the rebate /refund amount of Rs. 6,23,379/- dated 11.05.2017 under Notification No. 41/2012 (ST) dated 29.06.2012, within a time frame as may be fixed by this Court.

PRAYER in W.P.(MD) No.17433 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the First respondent in his order No. 36/2022-ST (SZ)/ASRA/MUMBAI (Common Order Nos. 33-39/2022-ST



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(SZ)/ASRA/MUMBAI) dated 19.04.2022 (issued on 21.04.2022) in F.No. 196/14-16/SZ/2018-RA/1476 and F.No. 196/16-19/SZ/2019 and quash the same and consequently direct the third respondent to sanction the rebate /refund amount of Rs. 6,36,518/- dated 21.02.2019 under Notification No. 41/2012 (ST) dated 29.06.2012, within a time frame as may be fixed by this Court.

For Petitioner
in all W.Ps. : Mr.S.Muthu Venkataraman

For R3
in all W.Ps., : Mr.N.Dilip Kumar
Senior Standing Counsel

COMMON ORDER

The petitioner is before this Court aggrieved by a part of the impugned Common Order Nos.33-39/2022-ST (SZ)/ASRA/MUMBAI dated 19.04.2024 issued on 21.04.2024 passed by the first respondent as Revisional Authority.

2.By the impugned orders, the first respondent has affirmed the views of the Appellate Commissioner in Order in Appeal No.MAD-CEX-000-APP-063 to 65-2018 dated 27.02.2018, Order in Appeal No.MAD-CEX-000-APP-309 and 310/2019 dated 14.10.2019 and Order in Appeal No.MAD-CEX-000-APP-311 and 312/2019 dated 14.10.2019.



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3. In these writ petitions, the challenge to the impugned orders are confined to the following orders:

S.No.	Writ Petition No	Date of impugned order	Impugned order No
1	17429 of 2022	19.04.2024	33/2022-ST (SZ)/ASRA/MUMBAI
2	17430 of 2022	19.04.2024	37/2022-ST (SZ)/ASRA/MUMBAI
3	17431 of 2022	19.04.2024	35/2022-ST (SZ)/ASRA/MUMBAI
4	17432 of 2022	19.04.2024	34/2022-ST (SZ)/ASRA/MUMBAI
5	17433 of 2022	19.04.2024	36/2022-ST (SZ)/ASRA/MUMBAI

4. They arise out of Orders at Serial Nos.1 and 3 passed by the Appellate Commissioner, namely the Commissioner of Central Excise (Appeals-I), Madurai, details of which are below:

S. No	Order of the Commissioner of Central Excise (Appeals-I), Madurai.	Order In Original No/Date
1	MAD-CEX-000-APP-063 to 065-2018 dated 27.02.2018 (appeal Nos.198/200/2017-ST(TVL))	25/2017 (ST)(REF), 26/2017(ST)(REF) and 27/2017 (ST)(REF), all dated 11.05.2017
2	309 & 310/2019 dated 14.10.2019	
3	311 & 312/2019 dated 14.10.2019 (Appeal No.51 and 52/2019-ST	06/2019(ST)(REF), dated 21.02.2019 and 07/2019(ST)(REF), dated 28.02.2019 and



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5.The petitioner had exported consignment of garnets extracted out of illegally mined sea sand contrary to the restrictions of the Government of Tamil Nadu in G.O(Ms)No.156, Industries (MMD) Department, dated 08.08.2013.

6.The petitioner had exported the garnets between October 2015-December 2015 and October 2016-December 2016 and had filed rebate claims under Notification No.41/12-ST, dated 29.06.2012 issued under Section 93A of the Finance Act, 1994.

7.Text of Notification No.41/12-ST, dated 29.06.2012 issued under Section 93A of the Finance Act, 1994 reads as under:

*“Notification- Service Tax-Service Tax
TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (1)
Government of India
Ministry of Finance
(Department of Revenue)
NOTIFICATION NO 41/2012-ST,
Dated: June 29, 2012*

In exercise of the powers conferred by section 93A of the Finance Act. 1994(32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department



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of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th "December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the exteht and manner specified herein below, namely

Provided that-

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

Explanation. For the purposes of this notification,

(A) "specified services" means-

(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export

ii) In the case of goods other than (i) above taxable services used for the export of said goods;

....."

8.The rebate claims for refund of service tax borne by the petitioner in the course of export of garnets extracted out of illegally mined sea sand were rejected by the Rebate Sanctioning Authority. Further appeals were also rejected by the second respondent. Details of 5 different Orders in Originals and Orders in Appeals are as detailed below:



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S.No	Period involved	Amount (Rs.)	Status	Order in Original	Date	Appeal Order
1	Oct-2015 to Dec-2015	4,04,170	Rejected	25/2017	11.05.2017	MAD-CEX-000-APP-063 to 065-2018 dated 27.02.2018
2	Jan-2016 to March-2016	6,23,379	Rejected	26/2017	11.05.2017	
3	April-2016 to June-2016	6,22,060	Rejected	27/2017	11.05.2017	
4	July 2016 to Sep 2016	6,36,518	Rejected	06/2019	21.02.2019	MAD-CEX-000-APP-311-2019 dated 14.10.2019
5	Oct 2016 to Dec 2016	3,94,131	Rejected	07/2019	28.02.2019	MAD-CEX-000-APP-312-2019 dated 14.10.2019

9.The case of the petitioner before this Court is that the issue is no longer *res integra* and is covered by a decision of the CESTAT, South Zonal Bench, Chennai, in *V.V.Minerals Vs. Commissioner of GST and Central Excise, Madurai* reported in **2022 (56) G.S.T.L. 167 (Tri.Chennai)**.

10.The learned counsel for the petitioner would submit that although the decision of the Tribunal is not binding on this Court, nevertheless it has a persuasive value and therefore submits that the export incentives granted to an exporter, like the appellant therein should be granted to the petitioner.



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11.It is submitted that irrespective of the fact that the sand, which were excavated illegally by Manickam Minerals represented by its Proprietor, M.Ramesh, which sold the same to the petitioner Company of which the said Proprietar was the Director, *ipso facto* would not Come under legitimate grant of rebate in the form of export incentive in Notification No.41/12-ST dated 29.06.2012.

12.The learned counsel for the petitioner would submit that even if there was illegal mining and export of the products, it was open for the counterparts of respondents 2 and 3 under the Customs Act, 1962 to institute appropriate proceedings to impose penalty, in which case, the petitioner would have got the option of paying redemption fine under Section 125 of the Customs Act, 1962.

13.It is submitted that the Customs Department has not initiated any proceedings. As a matter of fact, it is submitted that the exports were made after Let Export Orders were issued for export of the garnets.



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14. That apart, the learned counsel for the petitioner would submit that the Notification is silent as to the source of the material. It is submitted that as long as there are exports made, the export incentive in the form of rebate, ie., refund of service tax borne on input services used in the export of goods, whether manufactured or otherwise, cannot be denied.

15. It is therefore submitted that the writ petition be allowed. The learned counsel for the petitioner has also filed brief written submissions on the legal submissions, which reads as under:

“1. It is submitted that the petitioner's company is a private ltd company engaged in the exports of Garnets processed out of mined beach Garnet sands. It is having its registered office at No-146, Palayamkottai Road, Tuticorin 628 003. It holds Central Excise Registration AAAC14083QXM001 and also holds a Service Tax Registration AAAC14083QST001 coming under the jurisdiction of Respondent Number 3. The Petitioner's company also holds IEC Code Number 2888001691, which is a prerequisite for imports and exports under the Foreign Trade Policy read with Foreign Trade Development and Regulation Act, 1992 (FTDRA).

2. The Petitioner purchased finished Garnet from M/s Manickam Minerals (one of its Group firm, who mines the beach mineral viz. Garnet sand and process the same into Garnet). It also Purchased finished Garnet from M/s Indian Rare Earths Ltd-a unit of Govt of India. The purchased Garnets were packed in jumbo bags and exported to various countries. The exports were done following all the processes under the Customs Act. Shipping Bills were filed under Section 50 of the Customs Act, 1962, Let Export Order were endorsed by the proper



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officer under Section 51 ibid. The export proceeds by way of foreign exchange were received through proper banking channels as prescribed by the Reserve bank of India and the banks have issued Bank Realisation Certificates (BRC).

3. The Petitioner's company, in the process of export of Garnet had availed the services of Clearing & Forwarding Agents, Material handling services at port terminals, and Goods Transport Agency Services on payment of applicable Service tax charged by the service providers.

4. As the petitioner's company could not use the input services credit for payment of output duty/tax, and also in view of the fact that no duties/taxes are collected on exports, it had claimed rebate of Service tax by way of Refund of Service tax by filing claims in Form A-2 in terms of Notification 41/2012-ST dated 29.06.2012, from time to time. These rebate claims were being sanctioned the claimed rebate by the jurisdictional Assistant Commissioner/ Deputy Commissioner regularly without any difficulties.

5. Prior to October 2015, the claims for Rebate filed by the Petitioner were positively processed and rebate/refund of Service tax paid were sanctioned to the Petitioner regularly.

6. On the basis of the above District Collector's order dated 09.11.2016, following claims filed for rebate by way of refund of services tax paid on the services used in exports by the petitioner were rejected by the third respondent on the ground that the exports were illegal, since the exported goods were emanated from illicit mining of Garnet sands as per the District Level Committee Report above.

1	Oct 2015 to Dec 2015	404170	Rejected	25/2017	11.05.17
2	Jan 2016 to March 2016	623379	Rejected	27/2017	11.05.17
3	Aprial 2016 to June 2016	622060	Rejected	27/2017	11.05.17
4	Jul 2016 to Sep 2016	636518	Rejected	06/2019	21.02.2019
5	Oct 2016 to Dec 2016	394131	Rejected	07/2019	28.02.2019



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7. Aggrieved, the Petitioner had filed appeal with the Commissioner of Central Excise (Appeals), Madurai in respect of all the above claims. However, the commissioner (appeals) vide his orders -in - Appeal detailed below rejected the petitioner's appeal and upheld the orders of the Original Authority.

S.No	Period	Amt of Rebate	Order in Original	Date	Appeal Order
1	Oct 2015 to Dec 2015	404170	25/2017	11.05.17	MAD-CEX-000-APP-63 to 65 – 2018 dated 27.02.2018
2	Jan 2016 to March 2016	623379	27/2017	11.05.17	
3	April 2016 to June 2016	622060	27/2017	11.05.17	
4	Jul 2016 to Sep 2016	636518	06/2019	21.02.2019	MAD-CEX-000-APP-311-2019 dated 14.10.2019
5	Oct 2016 to Dec 2016	394131	07/2019	28.02.2019	MAD-CEX-000-APP-312-2019 dated 14.10.2019

8. The Petitioner approached the Revision Authority under Section 35 EE of the Central Excise Act, 1944 made applicable to Finance Act, 1992 and filed appeals against all the Orders-in Appeal passed by the Commissioner (Appeal) detailed above with the Principal Commissioner- Revision Authority and Ex-Officio Additional Secretary to the Government of India, Mumbai.

9. The Revision Authority vide his Order 33-39 dated 21.04.2022 issued in F.No. 196/14-16/SZ/2018/RA and F.No. 196/16- 19/SZ/2019



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rejected the petitioner's appeal on the ground that the exports were illegal and up-held the Orders-in-Appeals Nos MADCEX-000 APP 63 to 65-2018 dated 27.02.2018 and No 311 & 312 /2019 dated 14.10.2019 passed by the Commissioner (Appeals).

10. The petitioner respectfully submits that there are no appeal 4 provisions envisaged in Central Excise Act, 1944 or Finance Act, 1994 for filing appeal against the decision of the Respondent 1. Therefore, the petitioner filed these writ petitions before this Hon'ble high Court.

11. The petitioner submits that the department in the counter affidavits only on ground of jurisdiction that the petitioner ought to have filed an appeal against the order of the commissioner (appeals) before the Hon'ble CESTAT not before the revision authority. In this regard, it is humbly submitted that the revision authority entertained the revision petition against the order of the Commissioner (appeals) and further passed the order on merits not on jurisdiction.

12. Without prejudice to the above submission, the petitioner submits that after the revision order, the petitioner cannot file an appeal before the Hon'ble CESTAT and only remedy is before the Hon'ble High Court.

13. The petitioner submits that the department accepted the tax payment on service tax towards export of service for exporting the goods once the payment of tax has been accepted then the department cannot turn around to client was an illicit export.

14. The petitioner submits that the entire impugned order is mainly on the ban imposed by the State Government towards mining of minerals in beach sand while rejecting the rebate claim.

15. It is humbly submitted that the learned authority misdirected himself by placing reliance on the G.O. issued by the Tamilnadu Government towards mining operation. However, the present rebate claim is not on goods but on services utilized towards exporting of goods.

16. It is pertinent to state that the customs department has not initiated any proceedings towards the export of goods. Further, the department has processed the shipping bill under sec.50 of the Customs Act 1962, the let export order were endorsed by the proper officer under sec.51 of the Customs At 1962. The export proceeds by



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way of foreign exchange were received through proper banking channels as prescribed by the Reserve Bank of India and the banks are issued bank realization certificates. Therefore, the impugned order has not considered all these points while rejecting the rebate claim

17. The petitioner submits the present issue is considered by the Hon'ble CESTAT in the case of

a. *Transworld Garnet Pvt. Ltd vs. Commr. of GST & Central Excise* (the order is enclosed in page no.207 and 208 of the typeset).

b. *V.V. Minerals vs. Commr. of GST & Central Excise* reported in 56 GSTL 167 enclosed in page no.169 to 193 of the typeset.

Both the cases decided in favour of the exporters and also it is pertinent to state that to the best of their knowledge the department has not filed appeal against the said orders.

18. The petitioner submits on similar situations was considered in

c. *Commissioner of Income Tax vs. Piara Singh* reported in 1980 AIR 1271 SC - (in page no.194-197 of the typeset)

d. *Commissioner of Income Tax, Erode vs. TK. Thangamani* (Hon'ble Madras High Court) – (in page no.198-206 of the Typeset)

In view of the above, the petitioner prays before the Hon'ble High court to allow the writ petition and thus render justice.”

16. Defending the impugned orders, the learned Senior Standing Counsel for the respondents would submit that the petitioner invited the order of the respondents. It is submitted that against the order of the Appellate Commissioner, the petitioner ought to have filed an appeal before the CESTAT in terms of proviso to Section 86 of the Finance Act, 1994.



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17.It is submitted that instead of filing a statutory appeal under Section 86 of the Finance Act, 1994, the petitioner approached the first respondent as Revisional Authority under Section 35(EE), which applies only to rebate claims under the provisions of the Central Excise Rules, 2002, read with relevant Notification issued thereunder.

18.It is submitted that there are no disputed facts involved and therefore, rebate in the form of refund of service tax borne by the petitioner has been rightly denied. It is submitted that Section 93A of the Finance Act, 1994 and Notification No.41/12-ST have to be read harmoniously with the object that is sought to be achieved under the of the Finance Act, 1994.

19.It is submitted that the Act and the Notification are meant to incentivise only for legitimate exports and not those exports, which are illegal or out of illegal material. It is submitted that it would not further the public interest, for which, the Notification No.41/12-ST has been issued.

20.The learned counsel for the respondents would submit that the Original



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Authority has in any event rightly invoked the latin dictum *Ex turpi causa non oritur actio* to reject the rebate claim and hence, submits that the Writ Petitions are liable to be dismissed, as the petitioner has wrongly approached the wrong forum and has invited an adverse order against itself.

21.That apart, it is submitted that the beach sand was illegality excavated by Manickam Minerals, a proprietary concerned, who is owned by none other than the Managing Director of the petitioner and therefore, the facade of Company cannot be used to violate law to take advantage of the decision of the Tribunal in *V.V.Minerals Vs. Commissioner of GST and Central Excise, Madurai* reported in **2022 (56) G.S.T.L. 167 (Tri.Chennai)**

22.That apart, even though the petitioner has stated that the petitioner has also procured the beach sand from Indian Rare Earths Limited, the fact of the matter is that the finding of the Original Authority as affirmed by the Appellate Authority indicates that the exports in question were out of illegally mined beach sand supplied by the proprietary concerned of the Director of the petitioner viz., Manickam Minerals during the period in dispute.



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23.A reference was made to para 2.1 to para 5 of the Order in Original No. 25/2017(ST)(REF) dated 11.05.2017 bearing Ref.C.No.IV/10/69/2016-STU, which reads as under:

“2.1 In the meanwhile, the District level Committee of Tirunelveli District, formed to verify the allegation of illicit mining of Beach Sands after the ban imposed by the Government of Tamiil Nadu vide its Order G.O (MS) No. 156 dated 08.08.2013 and G.O (MS) No. 173 dated 17.09.2013 on mining of beach sand minerals under the chairmanship of District Collector Tirunelveli in its minutes Re No. M3/40365/2015 dated 09.11.2016 has recorded that the IOGS group have unlawfully transported a total quantum of 7,17,768 MT of mineral extracted from the raw sands during the period from 1999-2000 to 2016-17 and they have accepted a total quantum of 1,06,707 MT of minerals were transported by them during the period from 2014-15 to 2016- 17 after stoppage of mining operation and issuance of transport permits. The Committee have further observed that the entire quantum of 1,06,707 MT of minerals transported without transport permit during the period from 2014-15 to 2016-17 is an illegal transport. As the said quantity of 1,06,707 MT minerals included the minerals exported during October 2015 to December 2015 for which the refund claim has been filed, it appeared that the claimants were not eligible for the refund claimed in as much as the minerals had been exported by illicit transportation.

3. The claimants in their reply dated 24.02.2017, filed in response to the SCN, has stated that they are doing Export of Garnet abrasives for more than 10 years and they used to purchase the Garnet abrasives from M/s.Manickam Minerals, Tuticorin and Indian Rare Earth Ltd, Manavalakurichi on payment; that the G.O. (MS) No.156 dated 08.08.2013 and G.O.(MS) No. 173 dated 17.09.2013 issued by the Government of Tamil Nadu were not applicable to them as they do not have any mining licence and



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mining operations in their name; that they purchase the Garnet from the above parties and export them. Finally they have requested for sanctioning the refund of Rs.4,04,170/-. With their reply, they have enclosed sample copies of invoices for the purchases made from M/s.Manickam Minerals and M/s.Indian Rare Earths Limited.

4. The Commissioner of Customs, Tuticorin issued Public Notice No. 50/2016 dated 23.11.2016 in the light of complaints from various Beach Minerals Associations, Trade Unions and General Public regarding the eligibility for export of Beach Sand Minerals, in the light of the ban imposed by the Government of Tamil Nadu vide G.O.(MS) No.156 dated 08.08.2013 and G.O.(MS) No.173 dated 17.09.2013. By the Public Notice, the Commissioner has directed the exporters of Beach sand minerals to produce necessary certificates/ documents viz., Certificate of legally mined minerals from the concerned District Collector/ transport permits along with bulk permits, certifying the legal source of such Beach sand minerals brought to the Customs Area for export. Hence the claimants were asked vide letter even No. dated 28.02.2017 to furnish the details of export of Garnet Abrasives made from November, 2016. The claimants vide their letter dated 08.03.2017 submitted the details which shows the last date of export as 23.11.2016 (Shipping Bill date 21.11.2016) and after that no export has been made.

5. The claimants were offered a personal hearing on 03.04.2017 but vide their letter dated 12.04.2017, they requested for 15 days time on the ground of their consultant being out of station. On 09.05.2017. Shri, K. Pushparaj, Accountant of the Company appeared for Personal Hearing under authorization dated 05.05.2017 issued by the Company. He submitted that they are only traders of Garnet, Ilmenite, Zircon and Rutile; that they purchase about 90% of the Garnet from domestic manufacturers namely M/s Manickam Minerals owned by Shri M. Ramesh of Tuticorin and M/s Indian Rare Earth Limited, Manavalakurichi and the remaining 10% by direct import; that Shri M.Ramesh has mining lease and he manufactures Garnet at his processing unit at Navaladi, Tirunelveli District, that the Garnet are



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received from the above parties under invoices with other documents and they packed them in Jumbo Bags and export without any further processing: The Garnet are received from Indian Rare Earth Ltd., under invoices and transport permits, that M/s Manickam Minerals are supplying Garnet under their invoices, However, no transport permits are issued by them, that the District Collector Tirunelveli has circulated instructions to Commissioner of Customs, Tuticorin and others by informing about informing of one District level committee and its recommendation; that in this connection, they have filed a writ petition before Hon'ble High Court Madras, Madurai Bench to quash the minutes of the District Level Committee issued by the District Collector, Tirunelveli; though no stay order has been issued by the Court, the matter is sub judice and pending with court. Finally he requested for the refund of Rs 4,04,170/- claimed by them”

24.It is submitted that similar findings on facts have been rendered by the Original Authority, which was affirmed by the First Appellate Authority. It is submitted that the petitioner was called upon to produce transport permits which was also not furnished, which establishes that the mining was contrary to G.O.Ms.No.156, Industries (MMD) Department, dated 08.08.2013.

25.The learned counsel for the third respondent has filed a detailed written submissions, which reads as under:

PRAYER:



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The batch of 5 Writ petitions are filed by the petitioners seeking to quash the Common Revision Order Nos.33-39/2022-ST (SZ)/ASRA/MUMBAI dated 21.04 2022 upholding the Order in appeal Nos.63-65 of 2018 dated 27.02.2018 and 311 & 312 of 2019 dated 14.10.2019 and to direct the s respondent to sanction the rebate claim.

Foundational facts:

- 1. Petitioner is engaged in manufacture and export of "Garnet".*
- 2. Petitioner filed a rebate/refund claim of service tax paid on Terminal handling charges, GTA services & CHA services used for the export of goods under the Notification No.41/2012-ST dated 29.06.2012.*
- 3. Since the materials exported by the petitioner were illegally transported and are covered by illegal mining operations, upon the report of the District Level Committee (DLC) of Tirunelveli District that the petitioner had illegally transported a total quantum of 7,17,768 MT of minerals extracted from the raw sands during the period of 1999-2000 to 2016-2017, a show cause notices were issued.*
- 4. Petitioner admitted that they illegally transmitted 1,05,707 MT of minerals during the period from 2014-2015 to 2016-2017, as they did not have any transport permit.*
- 5. The adjudicating authority issued OIO Nos.25 to 27 of 2017 dated 11.05.2017, 06/2019 dated 21.02.2019 & 28.02.2019. It held that no right can accrue from illicit acts. It rejected the rebate claims.*
- 6. Petitioner filed appeals before the appellate authority in Appeal Nos.63 to 65 of 2018 dated 27.02.2018, 311 & 312 of 2019 dated 14.10.2019 were dismissed.*
- 7. Aggrieved by the above-mentioned order in appeals the petitioner*



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filed the revision applications before the revision authority under Section 35EE of the Central Excise Act, 1944. The revisionary authority vide his Common Revision Order Nos.33-39/2022-ST (SZ)/ASRA/MUMBAI dated 21.04.2022 upheld the orders of the appellate authority against which this present writ petitions are filed.

8. The details of the period, amount, OIOS, OIAS and other details are mentioned in the table below for reference:

interest which means only those persons and those activities that are in the interest of the public welfare will be eligible as they earn foreign exchange to the government through their lawful export activities.

9. The petitioner had exported illegally mined and illegally transported minerals; he cannot seek the benefit of exemption of service tax paid on such illegal export.

10. No illegal export can be said to have public interest and it would not be necessary to extend the benefit of exemption notification. The exemption benefit granted by the government is only for lawful exports.

11. No right can accrue from an illegal act. EX TURPI

CAUSA NON ORITUR ACTIO.

12. As per Section 86 of the Central Excise Act any person aggrieved by an order passed by a Principal Commissioner or Commissioner may file an appeal to the appellate tribunal against such order. Proviso to Section 86 of Finance Act, 1994 states that where an order relating to service which is exported, has been passed under Section 85 and the matter related to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such services, such an order be dealt with in accordance with provisions of Section 35EE of the Central Excise Act, 1944. The relevant portions of Section 86 of the Finance Act, 1994 is extracted hereunder for your reference:



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Section 86 Appeals to Appellate Tribunal

(1) [Save as otherwise provided herein, an assessee] aggrieved by an order passed by a [Principal Commissioner of Central Excise or] Commissioner of Central Exase under [section 73 or section 83A, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order]:

[Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35FE of the Central Excise Act, 1944 (1 of 1944)]

13. Petitioner ought to have filed any appeal before the CESTAT but had wrongly filed revision before the revision authority under Section 35EE of the Central Excise Act, 1944. Reliance is placed on 2019 (370) E.L.T. 1690 (G.O.I.) In Re: Adobe systems & 2016 (45) S.T.R. 301 (Tri. - Mumbai) Vodafone mobile services vs Commissioner of ST.

Conclusion:

1. The exemption can only be granted when the government is satisfied that there is a public welfare done in the case of export and involved no illegal act or crime or any action which arises from an illegal act.

2. However, in the present case the export carried out by the petitioner is not legal as it arises from an illegal act of mining of raw sand which has been banned by the government vide GO. (MS) No. 156 dated 08.08.2012.



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3. *Since the petitioner is involved in the illegal export of raw sand, he cannot be made cligible for the exemption provided under the Notification and not eligible for the rebate/refund claim.*

4. *The petitioner could not have filed a revision before the revision authority under Section 35EE of the Central Excise Act, 1944 and ought to have filed appeal against the Order in appeals before the CESTAT. Hence this present writ petition may be dismissed with liberty to challenge the order of the appellate authority before the learned CESTAT.*

5. *For the above reason there is no merit in the petitioner's contentions and it is humbly prayed that the writ petition may kindly be dismissed.*

26. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the third respondent.

27. In the taxing matters often, the Courts rely on the following passage of **Rowlatt.J.** of Kings Division Bench in ***Cape Brandy Syndicate Vs. Inland Revenue Commissioners*** reported in (1921) 1 KB 64.

“...in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”



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28.This view has been followed by the Hon'ble Supreme Court in ***Commissioner of Income Tax and another Vs. Yokogawa India Limited*** reported in ***(2017) 2 SCC 1*** and is often quoted in taxing matters.

29. At the same time, it is noticed that the issue on merits appears to be covered by the decision of the CESTAT, South Zonal Bench, Chennai, in ***V.V.Minerals Vs. Commissioner of GST and Central Excise, Madurai*** reported in ***2022 (56) G.S.T.L. 167 (Tri.Chennai)***.

30.The Tribunal has allowed the appeal filed by the appellant with the following observations:-

“5.On perusal of the impugned order as well as after hearing the submissions of both sides, I find that the ground for rejection is on an allegation that the appellant has done unlawful mining of raw sand and other minerals in excess of the permission granted to them. This aspect has to be looked into by the Govt. of Tamil Nadu as well as the committee formed for this purpose The provisions of Mines and Minerals Act of the State has to look into the legal consequences of unlawful mining. When the appellant has exported the goods paying service tax on the services availed for exporting the goods, the department cannot deny the refund stating reasons beyond the



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Customs Act as well as Finance Act Notification 41/2012 emanates from the Finance Act and therefore only if there is violation under the said Act as well as the notification, refund can be rejected Since the department does not have a case that the appellants have violated provisions of the Finance Act or the notification, I am of the opinion that the rejection of refund claim cannot sustain.

6. From the above discussions, the impugned order is set aside and the appeal is allowed with consequential relief, if any”

31. The above view expressed by the Tribunal in ***V.V.Minerals Vs. Commissioner of GST and Central Excise, Madurai*** reported in **2022 (56) G.S.T.L. 167 (Tri.Chennai)** cannot be applied in peculiar facts of the case, as the perpetrator of crime is himself claiming incentives as an exporter in the name of the petitioner Company.

32. Both the exports and perpetrator of crime are one and the same. If the Corporate facade is lifted, it is clear that the same M.Ramesh, who is the Managing Director of the petitioner, is the proprietor of Manickam Minerals. Therefore, the export incentives are not to be given for proceeds of crime. Grant of exports incentivies which are out of the illegal activity would not be keeping in tune with the public purpose for which exemption Notification No.41/12-ST, dated 29.06.2012 issued under Section 93A of the Finance Act, 1994 was issued.



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33.The export incentives under the Central Excise Act particularly Rules 18 and 19 of the Central Excise Rules, 2002 read with relevant Notifications and Rule 5 of the CESTAT Credit Rules, 2002 as also under Notification No.41/12-ST dated 29.06.2012 issued under Notification No.41/12-ST, dated 29.06.2012 issued under Section 93A of the Finance Act, 1994 are intended to incentivise legitimate exports. The idea of the incentivising such exports is to encourage such exporters, who compete in the international market and bring precious foreign exchange for the country, which enhances the foreign exchange reserves of the country and stabilizes the Government's position quay balance of payments.

34.Although in taxing matters, the Courts are not expected to look into the intentions while interpreting the statutes which include subordinate legislations and Notifications, I am of the view that the petitioner was not entitled to export incentive out of the export of goods made out of the illegally mined sea sand.



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35. Unless the exports are legitimate, the question of incentivising such exports would not and could not subserve public purpose. The public purpose in Section 93A of the Act would mean those exports which are legitimate and are within the four-corners of the law. Proceeds of crime and proceeds of illegal exports would not enure in favour of the petitioner in the form of rebate/albit refund of service tax borne on services used in the export of goods in violation of G.O(Ms)No.156, Industries (MMD) Department, dated 08.08.2013.

36. That apart, merely because the Custom Department has not taken any punitive action against the petitioner *ipso facto* would not mean that the petitioner would be entitled to export incentives under Notification No.41/12-ST, dated 29.06.2012 issued under Section 93A of the Finance Act, 1994. Therefore, the Writ Petition is devoid of merits.

37. That apart, the petitioner has approached the wrong forum under Section 86 of the Finance Act, 1994 before the Revisional Authority. The petitioner should have approached the CESTAT. Having approached this Court, I see no purpose in relegating the petitioner at this distant point of time by directing the



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petitioner to approach the alternate forum, namely Customs Excise Service Tax Appellate Tribunal in respect of the exports made by the petitioner during October 2015 to December 2016.

38. Therefore, these Writ Petitions are liable to be dismissed and are accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
mm/jen

21.06.2024

To

1. Principal Commissioner,
(Revision Authority),
Ex Officio Additional Secretary to the Govt of India,
8th Floor, World Trade Centre,
Cuffe Parade,
Mumbai 400 005.
2. The Commissioner of Central Excise (Appeals),
Circuit Office, 4 LBS Marg,
C.R. Building,
Madurai 625 002.
3. The Assistant Commissioner of Central Tuticorin Division,
Madurai GST & CEC Commissionerate
C-50, SIPCOT Industrial Complex, Tuticorin -8.

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C.SARAVANAN, J.

mm/jen

**Pre delivery Order made in
W.P.(MD) Nos.17429 to 17433 of 2022**

21.06.2024