BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.3285, 3288, 3289, 3290 & 3293 of 2015

M/s.Sanmar Foundries Limited,
87/1, Vadugapatti Village,
Viralimalai - 621 316.
Rep. by its Authorised Signatory,
J.Ramdoss. ... Petitioner in all the W.Ps.

Vs.

The Commissioner of Central Excise (Appeals),
Division II,
No.1,Williams Road,
Cantonment,
Trichy – 620 001. ... 1st Respondent in W.P.(MD)No.3285 / 2015

The Assistant Commissioner of Central Excise,
Division II,
No.1,Williams Road,
Cantonment,
Trichy – 620 001.

The Commissioner of Central Excise,
Division II,
No.1,Williams Road,
Cantonment,
Trichy – 620 001. ... Respondents 2 and 3 in W.P.(MD)No.3285 / 2015 & Respondents in W.P.(MD)Nos. 3288 to 3290 & 3293 / 2015

Prayer in W.P.(MD)No.3285 of 2015:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in the Impugned Order-in-Appeal No.188/2014, dated 14.10.2014, quash the same and direct the second respondent to refund the rebate sanctioned and appropriated against the confirmed dues which are pending before concerned Appellate Forums as the proceedings travel beyond the scope of Section 35F of the Central Excise Act 1944; against the Circular No. 984/08/2014-CX, dated 16.09.2014, issued by the Central Board of Excise and Customs; against the law laid down by this Court in the case of **M/s.Arunachala Gounder Textile Mills Pvt. Ltd vs. CCE,** (2012) TIOL 958.

Prayer in W.P.(MD)No.3288 of 2015:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in the Impugned Order-in-Original No.53/2014-R, dated 13.08.2014, quash the same and direct the respondents to refund the rebate sanctioned and appropriated against the confirmed dues which are pending before concerned Appellate Forums as the proceedings travel beyond the scope of Section 35F of the Central Excise Act 1944; against the Circular No. 984/08/2014-CX, dated 16.09.2014, issued by the Central Board of Excise and Customs; against the law laid down by this Court in the case of **M/s.Arunachala Gounder Textile Mills Pvt. Ltd vs. CCE,** (2012) TIOL 958.

Prayer in W.P.(MD)No.3289 of 2015:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in the Impugned Order-in-Original No.52/2014-R, dated 13.08.2014, quash the same and direct the respondents to refund the rebate sanctioned and appropriated against the confirmed dues which are pending before concerned Appellate Forums as the proceedings travel beyond the scope of Section 35F of the Central Excise Act 1944; against the Circular No. 984/08/2014-CX, dated 16.09.2014, issued by the Central Board of Excise and Customs; against the law laid down by this Court in the case of **M/s.Arunachala Gounder Textile Mills Pvt. Ltd vs. CCE,** (2012) TIOL 958.

Prayer in W.P.(MD)No.3290 of 2015:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in the Impugned Order-in-Original No.54/2014-R, dated 14.08.2014, quash the same and direct the respondents to refund the rebate sanctioned and appropriated against the confirmed dues which are pending before concerned Appellate Forums as the proceedings travel beyond the scope of Section 35F of the Central Excise Act 1944; against the Circular No. 984/08/2014-CX, dated 16.09.2014, issued by the Central Board of Excise and Customs; against the law laid down by this Court in the case of **M/s.Arunachala Gounder Textile Mills Pvt. Ltd vs. CCE,** (2012) TIOL 958.

Prayer in W.P.(MD)No.3293 of 2015:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein in the Impugned Order-in-Original No.62/2014-R, dated 18.08.2014, quash the same and direct the respondents to refund the rebate sanctioned and appropriated against the confirmed dues which are pending before concerned Appellate Forums as the proceedings travel beyond the scope of Section 35F of the Central Excise Act 1944; against the Circular No. 984/08/2014-CX, dated 16.09.2014, issued by the Central Board of Excise and Customs; against the law laid down by this Court in the case of **M/s.Arunachala Gounder Textile Mills Pvt. Ltd vs. CCE,** (2012) TIOL 958.

For Petitioner in all the W.Ps. : Ms.Radhika Chandrasekar

For Respondents in all the W.Ps.: Mrs.S.Ragaventhre
Junior Standing Counsel

COMMON ORDER

In these Writ Petitions, the petitioner has challenged the following impugned orders:-

Sl. No.	W.P. (MD)No.	Impugned Order	Date	Amount
1.	3285 / 2015	Order-in-Appeal No.188 / 2014 [Order-in-Original No. 31 / 2014-R, dt. 19.05.2014]	14.10.2014	8,59,634/-
2.	3288 / 2015	Order-in-Original No.53 / 2014-R	13.08.2014	3,58,789/-
3.	3289 / 2015	Order-in-Original No.52 / 2014-R	13.08.2014	4,21,852/-

4.	3290 /2015	Order-in-Original No.54 / 2014-R	14.08.2014	83,430/-
5.	3293 / 2015	Order-in-Original No.62 / 2014-R	18.08.2014	1,02,952.18 (Interest)

2. The petitioner had exported goods and filed rebate claims under Rule 18 of the Central Excise Rules, 2002. These rebate claims were allowed by the respondents. However, while sanctioning the amounts, the amounts have been adjusted towards the liability of the petitioner, pursuant to Order-in-Original No.2 / 2014, dated 13.03.2014, which order stood confirmed vide Order-in-Appeal No.52 / 2014, dated 20.08.2014.

3. The petitioner had earlier exported goods during April, 2014 and filed rebate claims under Rule 18 of the Central Excise Rules, 2002. These rebate claims were sanctioned by the respondents vide Order-in-Original No.103 / 2012, dated 28.09.2012. By virtue of Order-in-Original No.103 / 2012, dated 28.09.2012, a sum of Rs.27,71,599/- was sanctioned.

4. It is this amount, which was sanctioned to the petitioner, has been adjusted by the respondents in the impugned orders as Order-in-Original No.103 / 2012, dated 28.09.2012, sanctioning a sum of Rs.27,71,599/-

was reversed by the Commissioner of Central Excise (Appeals), vide Order-in-Appeal No.104 / 2013, dated 20.08.2013.

5. The Department had earlier filed appeal before the Appellate Commissioner against Order-in-Original No.103 / 2012, dated 28.09.2012. The Appellate Commissioner vide Order-in-Appeal No.104 / 2013, dated 20.08.2013, allowed the Department's Appeal.

6. Pursuant to Order-in-Appeal No.104 / 2013, dated 20.08.2013, reversing the order sanctioning rebate claim vide Order-in-Original No. 103 / 2012, dated 28.09.2012, a Show Cause Notice bearing reference in C.No.IV/2/26/2012-Rebate dated 16.09.2013 was issued under Section 11A of the Central Excise Act, 1944. The said Show Cause Notice Proceeding in turn culminated in Order-in-Original No.2 / 2014, dated 13.03.2014.

7. The proposals contained in the above show cause notice seeking to recover the sanctioned rebate claim of Rs.27,71,599/- was thus confirmed. Meanwhile, the petitioner preferred a Revision Petition before the Revisional Authority under Section 35EE of the Central Excise Act,

1944. The Revisional Authority, vide order dated 31.03.2014, in respect of 39 different rebate claims Vide Order Nos.103 - 141 / 2014 - CX, rejected the case of the petitioner.

8. The petitioner thus challenged the order of the Revisional Authority, dated 31.03.2014, in Order Nos.103 – 141 / 2014 - CX as also Order-in-Appeal No.52 / 2014, dated 20.08.2014 of the Appellate Commissioner, confirming the Order-in-Original No.2 / 2014, dated 13.03.2014 in W.P.(MD)No.1220 of 2015.

9. This Court, vide order dated 18.10.2023, set aside the order of the Appellate Commissioner in Order-in-Appeal No.52 / 2014, dated 20.08.2014 and also the order of the Revisional Authority in Order Nos. 103 - 141 / 2014 - CX, dated 31.03.2014. The said Writ Petition was allowed by following the ratio of this Court laid down by this Court in W.P.(MD)Nos.393 to 399 of 2015, vide its order dated 23.03.2022.

10. The case of the petitioner is that in view of the matter being remanded back to the Original Authority by order dated 18.10.2023, in W.P.(MD)No.1220 of 2015, there is no demand that is pending against the petitioner as on date pursuant to Order-in-Original No.2 / 2014, dated 13.03.2014 and therefore, the question of adjustment of the amount vide the impugned orders in these Writ Petitions together with interest is unsustainable. Hence, the learned counsel for the petitioner submits that the Writ Petitions deserves to be allowed on the facts of the case.

11. The learned counsel for the petitioner has placed reliance on a decision of this Court in **M/s.Arunachala Gounder Textile Mills Pvt. Ltd. vs. CCE**, (2012) TIOL 958, wherein at Paragraph 13, this Court held that adjustment of the amount during the pendency of the appeal before the Tribunal was unwarranted. Similarly, a reference was also made to the decision of this Court in **M/s.Flowserve Sanmar Limited vs. Union of India, Rep. by Revenue Secretary, Ministry of Finance, Department of Revenue, New Delhi and others** [W.P.Nos.2134 and 2135 of 2013, dated 02.04.2013], wherein *vires* of the Board's Circular No.967/01/2013-CX, dated 01.01.2013, was questioned. This Court held that the authorities cannot take coercive steps till the disposal of the stay petition.

12. The learned counsel for the petitioner has also referred several other decisions apart from the decisions of this Court.

13. Defending the impugned order, the learned Standing Counsel for the respondents, on the other hand, would submit that there are few arithmetical discrepancies and therefore, the matter may be remanded back.

14. The learned Standing Counsel for the respondents would further submit that decision of this Court rendered in **M/s.Arunachala Gounder Textile Mills Pvt. Ltd.** [cited supra] will not apply to the facts of the present case inasmuch as the petitioner was heard before orders were passed in the present case.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

16. The petitioner's eligibility for rebate on the exports made during months of March, 2013; July, 2011; December, 2011; October, 2011; and January, 2011, which are subject matter of rebate claims in the impugned orders are not in dispute. The impugned Orders-in-Original also confirm that the petitioner is entitled for rebate on the exports made by them. However, while sanctioning rebate claims, adjustments have been made under Section 11AA of the Central Excise Act, 1944, in respect of rebate that was sanctioned for a sum of Rs.27,71,599/-, vide Order-in-Original No.103 / 2012, dated 28.09.2012.

17. Although the Department succeeded before the Appellate Commissioner, vide Order-in-Appeal No.104 / 2013, dated 20.08.2013, and the petitioner's revisions were dismissed on 31.03.2014 and recovery were ordered in terms of Order-in-Original No.2 / 2014, dated 13.03.2014, which stands confirmed by the Appellate Commissioner's Order-in-Appeal No.52 / 2014, dated 20.08.2014, the fact remains that these orders have been set aside and the case has been remitted back to the respondents to consider the issue afresh as far as rebate claim for Rs.27,71,599/-. Thus, there is no demand that is remaining in force to be unenforced as on date for a sum of Rs.27,71,599/-.

18. Therefore, there is no justification in adjusting the above said amount of Rs.27,71,599/- from the rebates on exports made by the petitioner, which the petitioner is otherwise entitled to. Adjustments have been made against the respective Order-in-Original have already been given above. Hence, the amounts adjusted have to be refunded back to the petitioner together with interest. In case, in the remand proceedings, the petitioner is held ineligible for the rebate on the exports made by them in the month of April, 2012, the respondents can independently recover the amount from the date of other amount that may be refundable as on the date of the order to be passed by the Revisional Authority.

19. Under these circumstances, these Writ Petitions are allowed. No costs.

Index : Yes/ No
Neutral Citation: Yes / No 24.04.2024
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To
1.The Commissioner of Central Excise (Appeals),
Division II,
No.1,Williams Road,
Cantonment,
Trichy – 620 001.

2.The Assistant Commissioner of Central Excise,
Division II,
No.1,Williams Road,
Cantonment,
Trichy – 620 001.

3.The Commissioner of Central Excise,
Division II,
No.1,Williams Road,
Cantonment,
Trichy – 620 001.

C.SARAVANAN, J.

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Common order in
W.P.(MD) Nos.3285, 3288, 3289, 3290 & 3293 of 2015

24.04.2024