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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.3286 of 2015

M/S.Xomox Sanmar Limited,
87/1A, Vadugapatti Village,
Viralimalai 621 316,
rep. by its
Authorized Signatory
M.Chandrasekar ... Petitioner

/vs./

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

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

3.Commissioner of Central Excise (Appeals)
Division II,
No.1, Williams Road,
Cantonment, Trichy 620 001. ... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the third respondent herein in the Impugned Order in Appal No.77/2014 dated 22.08.2014 quash the same and direct the first Respondent to refund the rebate sanctioned and and as the Proceedings travel beyond the scope of Section 35F and Section 35C of the Central Excise Act, 1944 and also 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 the order passed by the Joint Secretary, Government of India-No.103-141/14-CX dated 31.03.2014.

For Petitioner : Mr.Chandrasekar

For Respondents : Mr.Nanda Kumar
Senior Standing Counsel assisted by
Mrs.Ragaventhree
Junior Standing Counsel

ORDER

The petitioner is before this Court challenging the Order in Appeal No. 77/2014 dated 22.08.2014 passed in A.No.50/2014-TRY (R) by the third respondent/Commissioner of Central Excise (Appeals), Trichy.

2.By the aforesaid order, the third respondent has rejected the petitioner's appeal against the Order in Original No.11/2014-R dated 12.02.2014. The appeal

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of the petitioner had arisen on account of appropriation of the rebate claim towards tax liability of the petitioner under Order in Original No.1669/2009 dated 11.11.2009 and the Order in Original No.8/2011-ST adjn dated 30.12.2011.

3.The petitioner had filed a rebate claim for a sum of Rs.6,41,416/- on 13.11.2013 for the exports made by the petitioner during the Month of May, 2013. The Rebate Sanctioning Authority scrutinized the rebate claim and sanctioned a sum of Rs.5,78,634/- under Section 11B of the Central Excise Act, 1944 r/w Rule 18 of the Central Excise Rules, 2002.

4.However, while sanctioning the aforesaid amount, the Rebate Sanctioning Authority has appropriated the aforesaid sum towards tax liability of the petitioner under Order in Original No.1669/2009 dated 11.11.2009 and the Order in Original No.8/2011-ST adjn dated 30.12.2011.

5.Both the Orders in Originals have been set aside by the Tribunal after the petitioner's appeal against them before the Appellate Commissioner were un-successful. As far as the Order in Original No.1669 of 2009 is concerned, the

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Tribunal had set aside the order passed by the Appellate Commissioner vide Order in Appeal No.152 of 2010 dated 26.08.2010 vide Final Order No.40821 of 2018 in E/734/2010 of the petitioner. Pursuant to the aforesaid order in E/734/2010, the petitioner opted to settle the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019.

6.The petitioner has discharged the liability under the aforesaid Scheme and therefore, the petitioner seeks direction to refund the amount of Rs.5,26,662/- appropriated towards part of the liability confirmed vide Order in Original No. 1669 of 2009 dated 11.11.2009.

7.As far as the appropriation of amount of Rs.51,972/- towards tax liability of Rs.1,63,778/- vide Order in Original No.8 of 2011-ST is concerned, the petitioner had preferred an appeal before the Appellate Commissioner vide Order in Appeal No.152 of 2010 dated 26.08.2010.

8.The Appellate Commissioner vide Order in Appeal No.196 of 2012 dated 31.08.2012 had rejected the appeal of the petitioner. On further appeal before the

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CESTAT in A.No.E/489/2012, the petitioner succeeded, as the appeal was allowed by the Tribunal vide Final Order No.40076/2013 dated 15.03.2013. Thus, as far as the liability under Order in Original No.1669 of 2009 dated 11.11.2009 and the Order in Original No.8 of 2011-ST Adjn dated 30.12.2011 are concerned, they have been set aside by the Tribunal.

9.As far as the demand that was confirmed vide Order in Original No.1669 of 2009 is concerned, the Tribunal had remanded the case back to the Original Authority vide Final Order No.40821 of 2018 in A.No.E/734/2010 and that the petitioner has settled the dispute under the SVLDRS Scheme, 2019 and discharge certificate in Form -4 has also been issued to the petitioner by the Designated Authority on 29.01.2021. Thus, the liability of the petitioner has been either dropped or squared up under the SVLDRS Scheme. Therefore, the appropriation made pursuant to the aforesaid order is liable to be set aside.

10.Considering the above, the Writ Petition stands allowed with consequential relief to the petitioner. The respondents are directed to refund the amount that was sanctioned by the Rebate Sanctioning Authority together with

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applicable interest under Section 11(b) of the Central Excise Act, 1944 to the petitioner. No costs.

Index : Yes / No
Internet : Yes / No
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05.06.2024

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C.SARAVANAN, J.

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W.P.(MD) No.3286 of 2015

05.06.2024

https://www.mhc.tn.gov.in/judis