IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2338 of 2021
and C.M.P.No.14837 of 2021

1.The Additional Director General of Foreign Trade,
Ministry of Commerce & Industry,
Udyog Bhavan, New Delhi.

2.The Zonal Joint Director General of Foreign Trade,
Shastri Bhavan, CPWD Annexe Building, 4th Floor,
No.26, Haddows Road,
Chennai-600 006. .. Appellants

vs

M/s. Manali Petrochemical Limited
Represented by its Head (Accounts)
E.N.Rangaswami,
Ponneri High Road,
Manali, Chennai-600068 .. Respondent

Prayer: Appeal filed under Clause 15 of the Amended Letters Patent, 1985 against the order dated 16.09.2019 passed by the learned Single Judge in W.P.No.23194 of 2009.

For Appellants : Dr.G.Babu

For Respondent : Mr.T.Ramesh
for Mr.S.Muthuvenkataraman

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Appellants are impugning an order and judgment dated 16.09.2019 passed by a learned Single Judge of this court, allowing the writ petition, and consequently quashing an order dated 23.09.2009 passed by first appellant.

2. Respondent was awarded a contract for supply of 400 Metric Tons of Composite Polyol-78 to Oil and Natural Gas Commission. The supply was in connection with petroleum operations undertaken under petroleum exploration licenses/mining leases and were conducted on an international competitive bidding (ICB), in line with the provisions of paragraph 8.2 (f) and 8.4.4 (iii) of the Foreign Trade Policy (FTP).

3. As per the policy, in cases of supply, pursuant to international

competitive bidding, relating to a project or purpose, in respect of which the Ministry of Finance, by Notification, has permitted import of such goods, levy of customs duty shall be at zero rate. There is a certificate on record issued by the Project Authority i.e. ONGC, certifying that the supply of goods required in connection with petroleum operations undertaken under petroleum exploration licenses or mining leases under international competitive bidding is made in accordance with the provisions of paragraph 8.2 (f) and 8.4.4 (iii) of the policy and the import content of the order is nil.

4. Respondent had paid the terminal excise duty and claimed refund. The basis for claiming a refund is that because paragraph 8.2(f) provides that supply of goods to any project or purpose in respect of which the MOF, by a notification, permits import of such goods at zero customs duty shall be regarded as deemed exports under FTP, provided, goods are manufactured in India. Chapter 8.3 also provides that deemed export shall be eligible for benefits in respect of manufacture and supply of goods qualifying a deemed exports. One of the benefits under 8.3 (c) is exemption from terminal excise duty where supplies are made against ICB.

5. Admittedly, respondent has paid terminal excise duty. Since respondent was entitled to claim exemption, respondent applied for refund. This was rejected by appellant No.1 and aggrieved by the rejection, respondent preferred a writ petition which came to be allowed vide order dated 16.09.2019. It is the said order that is in challenge before us.

6. We are in agreement with the learned Single Judge inasmuch as if a party is entitled to claim exemption from terminal excise duty where supplies are made against ICB, why should he not claim refund of the amount paid. Revenue admits that terminal excise duty has been paid and the supplies were made against ICB. In such a situation, the option to select the relief of a choice vests with the assessee. We find support for this view in ***H.C.L. Limited vs Collector of Customs***[1].

7. Counsel for appellants relies on a judgment of the Apex Court in ***Sandoz Private Limited vs Union of India and others***[2] to buttress his case. We are afraid, the judgment is of no help to him, inasmuch as in the case at hand it is an admitted position that respondent was entitled to exemption

1 2001 (130) ELT 405 (SC)
2 (2022) 16 SCC 176

under 8.3 (f). Appellants' case is, having paid once, he cannot claim refund. If we accept counsel's submissions, that would only encourage unjust enrichment by the Government of India.

8. Appeal is dismissed. There shall be no order as to costs. Consequently, interim application is closed.

(K.R.SHRIRAM, C.J.) (MOHAMMED SHAFFIQ,J.)

04.03.2025

Index : Yes/No
NC : Yes/No
mrn

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THE HON'BLE CHIEF JUSTICE
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MOHAMMED SHAFFIQ,J.

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