IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.No.28930 of 2022

M/s. Winstar Marketing India Pvt.Ltd.,
represented by its Managing Director,
Mr.T.J.Jezreel Hussain,
No.112, Chokkanathar Street,
Karthikeyan Nagar, Maduravoyal,
Chennai - 600 095 ..Petitioner

Vs.

The Assistant Commissioner of Customs (Refunds-II)
Custom House No.60, Rajaji Salai,
Chennai - 600 101. ..Respondent

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter dted 21.12.2021 in F.No.SR.No.1152/2028-Refunds of the respondent and quash the same and direct the respondent to sanction the refund amount in respect of refund application of the petitioner filed vide letter dated 20.08.2018.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.B.Arvind srevatsa,
Jr.Standing Counsel for
Customs and Central Excise.

ORDER

The petitioner has challenged the impugned communication dated 21.12.2021 received from the respondent, under which, it has been informed that the earlier refund claim dated 20.08.2018, submitted by the petitioner is treated as closed and the petitioner has been requested to file a fresh refund claim.

2. Earlier, the petitioner had sought for refund of customs duty pertaining to imports made by them which was rejected by the original authority on 10.01.2020. Aggrieved by the same, the petitioner preferred an Appeal before the Commissioner of Customs(Appeals). By order dated 26.11.2021, the Commissioner of Customs (Appeals), set aside the order of the original authority and allowed the Appeal by directing the original authority to consider the request of the petitioner seeking for refund afresh. The original refund application was made by the petitioner on 20.08.2018. The petitioner has also sought for interest for the delayed payment of the refund amount. The petitioner is aggrieved by the impugned communication dated 21.12.2021 issued by the respondent, under which, it has been made clear that the refund claim dated 20.08.2018 made by the petitioner filed earlier is treated as closed/returned. Under the impugned communication, the petitioner has also been directed to file a fresh refund claim and the time limit for filing such a fresh refund claim starts from the date of the

order i.e., 26.11.2021.

3. Learned counsel for the petitioner would submit that if the petitioner files a fresh refund claim, they will lose the interest amount as the refund claim made by the petitioner would be taken into consideration only from the date of the fresh refund claim and not from the original refund claim made by them on 20.08.2018.

4. A counter has also been filed by the respondent in this writ petition reiterating the contents of the impugned communication. However, since the petitioner has succeeded in the Appeal before the Commissioner of Customs(Appeals) who has set aside the order of the original authority and has directed the original authority to consider the refund application dated 20.08.2018 submitted by the petitioner afresh, the petitioner's right to claim refund together with interest from 20.08.2018, should not be deprived for no fault of theirs. However, the refund request will have to be considered by the respondent on merits and in accordance with law.

5. The petitioner is aggrieved only by the communication received by them which states that the earlier refund claim made by the petitioner dated 20.08.2018 is treated as closed/returned, in which event, the petitioner apprehends that the petitioner will not be able to get interest, in case, the respondent finds that the petitioner is eligible for refund from 20.08.2018 onwards, which is the date of the

original application submitted by the petitioner seeking for refund. Since the petitioner had succeeded in the Appeal filed by them before the Commissioner of Customs(Appeals), the interest of the petitioner has to be protected by directing the respondents to consider the refund application on merits and in accordance with law and in case, if they find that the petitioner is eligible for refund, the payment of interest for the delayed period should be considered from 20.08.2018 onwards and not from the fresh refund application submitted by the petitioner, pursuant to the order passed by the Commissioner of Customs(Appeals).

6. Having challenged the rejection of the petitioner's refund application by the original authority and having succeeded before the appellate authority namely, Commissioner of Customs(Appeals), the petitioner's rights to claim interest from the date of his original application dated 20.08.2018 should not be defeated. Therefore, the refund claim to be submitted afresh by the petitioner in terms of the impugned communication will have to be considered based on the petitioner's original refund application dated 20.08.2018 and not from the date when the fresh application is going to be submitted by the petitioner, pursuant to the impugned communication.

7. For the foregoing reasons, this Writ Petition is disposed of by directing the petitioner to submit a fresh application seeking for refund pertaining to the

subject transaction with the respondent. The respondent shall consider the said refund application on merits and in accordance with law as if the date of the refund application is 20.08.2018, which is the actual date on which the petitioner had earlier submitted the refund application. The respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this order. No costs.

07.03.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No

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Custom House No.60, Rajaji Salai,
Chennai - 600 101.

ABDUL QUDDHOSE,J.

vsi

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