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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.No.32533 of 2023

M/s. Jain Resource Recycling Pvt.ltd.,
represented by its Managing Director,
Shri.Kamlesh Jain,
The Lattice, No.20, Weddels Road,
4th Floor, Kilpauk,Chennai - 600 010 ..Petitioner

Vs.

1. The Deputy Director,
   Directorate of Revenue Intelligence,
   Regional Unit, 2nd Floor,
   Avalon Building,
   Above Indian Bank,B/J.H.S.D. Jain School,
   Piplod-Vesu, Piplod, Surat - 395 007

2. The Senior Intelligence Officer,
   Directorate of Revenue Intelligence,
   Regional Unit, 2nd Floor,
   Avalon Building,
   Above Indian Bank,B/J.H.S.D. Jain School,
   Piplod-Vesu, Piplod, Surat - 395 007

3. The Deputy Commissioner of Customs (Refunds)
   Customs Division,
   Surat, Gujarat. ..Respondents

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 communication dated 26.09.2023 issued by the 1st respondent in

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F.No.DRI/AZU/ SRU/B/INV-10 (INT-05)/2023/818 and quash the same and further direct the respondents to refund an amount of Rs.40,00,000/- collected from the petitioner.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.M.Santhanaraman, Senior Standing Counsel

O R D E R

This writ petiton has been filed challenging the impugned communication dated 26.09.2023 issued by the first respondent rejecting the petitioner's request for refund of customs duty claimed to have been paid by them pursuant to the investigation under protest.

2. Under the impugned order, the first repondent has rejected the petitioner's request on the ground that the first respondent office is not the proper office for filing and processing refund application. Under the impugned order, the petitioner has been directed to approach the 3rd respondent and file an application for refund in the prescribed proforma under section 27 of the Customs Act, 1962.

3. According to the petitioner, by total non-application of mind, the petitioner has been directed to file a refund application under section 27 of the Customs Act, 1962, as the petitioner contends that they never sought for refund but they had only sought for return of the amount paid by them under protest pursuant to an

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investigation.

4. According to the petitioner, a demand for payment of customs duty/penalty or any other amount under the Customs Act can be made by the respondents only through a show cause notice, however, till date, no show cause notice has been issued by the respondents. The petitioner claims that a sum of Rs.40,00,000/- was deposited with the respondents under protest pursuant to an investigation involving a cargo imported by them.

5. Learned counsel for the petitioner drew the attention of this Court to section 27 of the Customs Act and would submit that since section 27 of the Customs Act deals with refund of any duty or interest, the said provisions is not applicable to the case of the petitioner who had deposited a sum of Rs.40,00,000/- with the respondents under protest pursuant to an investigation conducted by them in respect of a cargo imported by the petitioner.

6. Learned counsel for the petitioner also drew the attention of this Court to the decisions rendered by various High Courts, more particularly, to a decision rendered by Delhi High Court in the case of ***Team HR Services Pvt.Ltd. vs. Union of India*** reported in ***(2020(38) G.S.T.L. 457(Del.)*** and would submit that the respondents as a State can recover and/or retain as tax only such amount which are assessed and found due as tax and which assessment has attained finality.

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According to him, since there was no assessment in respect of the amount of Rs.40,00,000/- deposited by the petitioner with the respondent under protest, the question of treating the request of the petitioner for the return of the said money cannot be treated to be a refund application falling under section 27 of the Customs Act.

7. Learned Standing Counsel appearing for the responents would reiterate the contentions in the counter filed by the 1st and 2nd respondents and would submit that only in accordance with law i.e., by applying section 27 of the Customs Act, the request of the petitioner has been refused to be entertained by the 1st responent under the impugned order by directing the petitioner to approach the proper officer, namely the 3rd respondent, who is the competent authority to decide the application for refund under section 27 of the Customs Act.

8. Admittedly, the sum of Rs.40,00,000/- was paid by the petitioner only pursuant to the investigation and they have also paid the said sum only under protest as seen from their letter dated 19.09.2023. The case of the petitioner is not a case where the petitioner had voluntarily paid the customs duty or any other amount payable as per the provisions of the Customs Act. Section 27 of the Customs Act deals with cases where the duty or any payments were made voluntarily and in those cases, in case excess amounts were paid, the party is

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entitled to claim for refund of duty. The contentions of the petitioner as raised in this writ petition have not been considered in the imugned communication issued by the first respondent. The contentions of the petitioner are as follows:

(a) Any claim of any amount payable under the Customs Act can be made only after issuance of a show cause notice and only after a proper assessment made by the statutory authorities under the Customs Act, 1962.

(b) The payment of Rs.40,00,000/- deposited with the respondents was made under protest purusant to an investigaiton conducted by the respondents pertaining to a Cargo imported by the petitioner.

(c) The claim made by the petitioner seeking for return of a sum of Rs.40,00,000/- from the respondents will not fall within the purview of section 27 of the Customs Act, 1962, as the amount sought for is not a claim for refund of duty but for return of money .

9. In the impugned order, the 1st respondent has rejected the petitioner's request by a non-speaking order with regard to the contentions of the petitioner as raised in this writ petition. Mechanically, the request of the petitioner has been rejected on the ground that the 1st respondent office is not a proper office for filing and processing refund request under section 27 of the Customs Act. Under the impugned order, the petitioner has been directed to approach the Assistant/Deputy

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Commissioner Customs, Customs Division, Surat, and file an application for refund in a prescribed proforma under section 27 of the Customs Act, 1962. The petitioner has categorically contended through various grounds raised before this Court that by total non-application of mind, the impugned communication has been issued by the 1st respondent, as according to him, the claim made by the petitioner will not fall under Section 27 of the Customs Act. This Court finds that the impugned order is a non speaking order, as the decisions relied upon by the learned counsel for the petitioner and also after hearing the submissions made by the learned counsel for the petitioner, this Court finds that there is a *prima facie* case on merits in the petitioner's contentions, but ultimately, the respondents will have to consider the contentions of the petitioner once again, and come to a correct conclusion in accordance with law and this Court is leaving the issue open for the respondents to consider the request of the petitioner once again, on merits and in accordance with law, after affording one personal hearing to the petitioner and also permitting the petitioner to file their written submissions.

10. Accordingly, the impugned communication dated 26.09.2023 which is a non-speaking order passed by the 1st respondent is hereby quashed and a direction is issued to the 1st respondent to consider the petitioner's request seeking for return of a sum of Rs.40,00,000/-, which according to the petitioner was paid under

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protest pursuant to the investigation carried out by the respondents pertaining to a cargo imported by the petitioner, and pass order afresh on merits and in accordance with law, after affording one personal hearing to the petitioner and also permitting the petitioner to file their written submissions, within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs.

21.02.2025

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

To

1. The Deputy Director,
   Directorate of Revenue Intelligence,
   Regional Unit, 2nd Floor, Avalon Building,
   Above Indian Bank,B/J.H.S.D. Jain School,
   Piplod-Vesu, Piplod, Surat - 395 007

2. The Senior Intelligence Officer,
   Directorate of Revenue Intelligence,
   Regional Unit, 2nd Floor, Avalon Building,
   Above Indian Bank,B/J.H.S.D. Jain School,
   Piplod-Vesu, Piplod, Surat - 395 007

3. The Deputy Commissioner of Customs (Refunds)
   Customs Division, Surat, Gujarat.

ABDUL QUDDHOSE,J.

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