

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 23.11.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

+W.P.(MD)No.8345 of 2010

#M/s. TVS Srichakra Limited,
(Moulded Products Division),
Rep by its General Manager Finance,
Mr.R.Sundararajan,
Arittapatti Road,
Narasingampatti Village,
Melur Taluk,
Madurai ? 625 122. : Petitioner
Vs.

\$1.The Department of Revenue,
Ministry of Finance,
Rep by its Joint Secretary,
14, Hudco Vishala Bldg ?B? Wing,
6th Floor Bhikaji Cama Place,
New Delhi ? 110 066.

2.The Commissioner of Central Excise,
Central Revenue Building Bibikulam,
Madurai ? 625 002. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in Order No.379/10~CX dated 23.03.2010, on the file of the first respondent and quash the same and consequentially direct the second respondent to allow the rebate of Rs.3,62.020/~ as claimed by the petitioner herein.

!For Petitioner : Mr.S.P.Maharajan
^For Respondent No.1 : Mr.C.Nandagopal
For Respondent No.2 : Mr.S.Gurumoorthy

:ORDER

The petitioner is a Company engaged in the manufacture of phenolic resin knobs. The petitioners also clear their final products to various countries by way of exports. The petitioner purchased the raw material without payment of any duty in terms of Rule 19(2) of Central Excise Rules, 2002. Thereafter, they paid the export duties on the final goods, in terms of Rule 18 and thereafter, claimed rebate. The petitioners placed reliance on Notification No.43 of 2001~CE (NT) dated 26.06.2001, in support of their claim for rebate. But the Assessing Authority / Assistant Commissioner of

Central Excise, Madurai II Division, by order dated 05.07.2006, rejected the claim. The said order of rejection was sustained by the appellate authority, namely, the second respondent herein by order dated 26.10.2006. The same was further confirmed by the first respondent by order dated 23.03.2010. Challenging the same, this writ petition has been filed.

2. Heard the learned Counsel for the revision petitioner as well as the learned Standing Counsel for the respondents.

3. It is not in dispute that the orders of rejection rest entirely on Notification No.10 of 2004 CE (NT) dated 02.06.2004, issued by the Central Board of Excise and Customs. By the said notification, dated 02.06.2004, the earlier Notification No.43 of 2001~CE (NT) dated 26.06.2001, stood amended in the following terms.

?(a) for paragraph (vi), the following paragraph shall be substituted, namely:~

?(vi) The goods shall be exported on the application in Form ARE~2 specified in the Annexure and the Procedures specified in the Ministry of Finance (Department of Revenue) notification No.42 / 2001 ? Central Excise (N.T.), dated the 26th June, 2001 (vide G.S.R. 471(E), dated the 26th June, 2001, shall be followed.~;

(b) after Explanation I, the following Explanation shall be inserted, namely:~

?Explanation II. For the removal of doubt, it is clarified that the goods manufactured or processed using the excisable goods so procured without payment of duty under this notification shall be exported in terms of sub~rule (1) of rule 19 of the Central Excise Rules, 2002.~?

4. It is on the strength of this amended notification, the impugned orders came to be passed.

5. It is a matter of record that this amending Notification No.10 of 2004 CE (NT) dated 02.06.2004, was held to be bad in law by the Hon-ble Division Bench of the Gujarat High Court, in the decision rendered in Zenith Spinners Vs. Union of India, reported in 2015 (326) E.L.T. 97 (Guj.). No doubt, the revenue took the matter on appeal before the Hon-ble Supreme Court of India, in Civil Appeal No.2798 of 2006. On 28.08.2015, the Hon-ble Supreme Court, dismissed the said Civil Appeal.

6. The learned Standing Counsel wants to take advantage of the observations and reasoning set out in the order of dismissal to sustain the impugned orders. The order of the Hon-ble Supreme Court, in the said Civil Appeal reads as under:

?The amendment Notification No.10/2004, dated 2~6~2004 has been held to be bad in law by the High Court. The submission of the respondent herein was that in any case, the said notification would apply prospectively. It is admitted that the Central Board of Excise and Customs has thereafter issued circular clarifying that the said notification would apply prospectively.

2. Most of the demand in the instant case pertains to the period prior to the issuance of the said notification and so on this ground itself, the

show cause notice pertaining to that period would be bad in law.

3. In these circumstances, when we have found that the subject matter has become almost tax neutral, it is not necessary to entertain this appeal. The civil appeal is, accordingly, dismissed.?

7. In as much as the Civil Appeal filed by the revenue stood dismissed and the order passed by the Hon-ble Division Bench of the Gujarat High Court was not upset or modified in any manner, I am of the view that this Court has to proceed on the premise that the Notification No.10 of 2004 CE (NT) dated 02.06.2004, continues to remain struck down. It has not been revived.

8. In fact, the learned Counsel appearing for the petitioner brought to the notice of the Court, a subsequent decision of the Hon-ble Division Bench of the Gujarat High Court, in Centurion Laboratories Pvt. Ltd. Vs. Union of India, reported in 2017 (350) E.L.T. 479 (Guj.). In the said decision also, the Zenith Spinner-s case was followed.

9. Since, the sheet~anchor of the impugned orders itself stand undermined, I am of the view that the orders impugned in the writ petitions will have to be quashed. They are accordingly quashed. The second respondent is directed to allow the rebate of Rs.3,62,020/~, with consequential statutory benefits as claimed by the petitioner herein. The said order shall be passed by the second respondent within a period four [4] weeks from the date of receipt of a copy of this order.

10. The Writ Petition stands allowed, accordingly. No costs.

To

1. The Joint Secretary,
Department of Revenue,
Ministry of Finance,
14, Hudco Vishala Bldg ?B? Wing,
6th Floor Bhikaji Cama Place,
New Delhi ? 110 066.

2. The Commissioner of Central Excise,
Central Revenue Building Bibikulam,
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