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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 31.01.2023

+ **W.P.(C) 17367/2022**

SENTEC INDIA COMPANY PRIVATE LIMITED

..... Petitioner

Through: Mr. Abhishek Garg,
Mr. Yash Gaiha & Mr.
Rawesh Mankotia, Advs.

versus

ASSISTANT COMMISSIONER OF CUSTOMS & ANR.

..... Respondents

Through: Mr. Adit Khorana,
Mr. Manek Singh & Mr.
Aman Sahni, Advs.
Mr. Harpreet Singh, Sr.
SC with Mr. Suhant
Mathur & Mr. Jatin Kumar
Gaur, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J (Oral)

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 07.11.2022, passed by the respondents, whereby its application for refund was rejected. The petitioner further prays that directions be issued to the respondents to process its claim for refund of Extra Duty Deposit (hereafter 'EDD') of ₹13,53,326/- in a time bound manner.
2. The petitioner claims that it is engaged in the business of importing goods from various overseas entities including some that are related to the petitioner.
3. During the period of April, 2014 to December, 2017, the petitioner had imported certain goods from Sentec E&E Co. Ltd., Taiwan and other associated companies.

4. The said imports were from related parties, thus, the same were subject to assessment by the Special Valuation Branch (hereafter '**SVB**') in terms of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5. While those proceedings were pending, the goods in question were cleared on provisional assessment basis on payment of EDD of 1% or 5% in terms of Circular No. 11/2001-Cus dated 23.02.2001 and Circular No. 1/1998-Cus dated 01.01.1998.

6. The proceedings before SVB were finalised and pursuant to the value of the goods as finalised, the petitioner claimed that ₹57,52,076 became refundable. In the circumstances, on 19.02.2019, the petitioner filed an application for refund of EDD before the learned Assistant Commissioner of Customs (respondent no. 1). The said application was partly allowed by order dated 20.06.2019. Refund claim for an amount of ₹43,21,974 was sanctioned; claim of ₹76,776 was rejected on the ground that the challans were unavailable; and the refund of an amount aggregating to ₹13,53,326/- was rejected on the ground that the petitioner had not established that it had not passed on the duty to its customers and, thus, not satisfied the bar of unjust enrichment.

7. Aggrieved by the order dated 20.06.2019, the petitioner filed an appeal before the Commissioner of Customs (Appeals), New Delhi. The petitioner contended that EDD was in the nature of a deposit and therefore, the principle of unjust enrichment ere inapplicable to deposit of EDD. The learned Commissioner (Appeals) accepted the said contention and passed an order dated 09.04.2021, setting aside the order dated 20.06.2019, passed by respondent no. 1 to the extent of denial of refund of ₹13,53,326/-.

8. Notwithstanding the petitioner had prevailed in his challenge to the order dated 20.06.2019, whereby its application for refund of ₹13,53,326/- was rejected, the respondents did not process the petitioner's application for refund of EDD. Undisputedly, this would be the necessary consequence of the order dated 09.04.2021, passed by the learned Commissioner of Customs (Appeal).

9. On 22.07.2022, the petitioner made a written request, essentially, calling upon the respondents give effect to the appellate order dated 20.06.2019 and refund the balance amount of ₹13,53,326/-.

10. The petitioner's request for this refund was treated as a fresh application under Section 27 of the Customs Act, 1962 (hereafter '**the Customs Act**') and was rejected by the impugned order on the ground that the same was not filed within limitation.

11. It is apparent from the facts as noted above that the petitioner's written request dated 22.07.2022, seeking refund of the balance amount was not an application under Section 27 of the Customs Act, but merely a request to the respondents to act in accordance with law and give effect to the appellate order dated 20.06.2019. The concerned authority overlooked the fact that the petitioner's application for refund of EDD was made on 19.02.2019.

12. Once the order dated 20.06.2019, partly rejecting the said application had been set aside, the natural corollary would be to process the said application and to grant the refund, if otherwise due.

13. The respondent has filed a counter affidavit, however, the same is not on record. A copy of the same has been handed over to this Court. The respondent seeks to resist the present petition

on, essentially, two grounds. First, it states that the petitioner has a remedy of appeal before the Commissioner of Customs (Appeals) under Section 128 of the Customs Act. And second, that the appellant had not quoted the order passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 in Re: Cognizance for Extension of Limitation*, whereby the period from 15.03.2020 to 28.02.2022 was directed to be excluded for the purpose of computing limitation in respect of any application or any appeal.

14. Both the grounds, as stated in the counter affidavit, are bereft of any merit.

15. Respondent no. 1 has misdirected itself in considering the petitioner's request for refund of the balance amount of ₹13,53,326/- made on 22.07.2022 as a fresh application. The said request was in continuation of the proceedings relating to the application for refund dated 19.02.2019. Thus, the question of the petitioner's claim being barred by limitation does not arise.

16. In view of the above, the second ground that the petitioner had not quoted the orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 (supra)*, does not arise in the present case.

17. Notwithstanding the above, the petitioner's request for refund could not be disallowed on the aforesaid ground. The authorities are fully aware of the orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 (supra)* and this Court cannot countenance the approach of the respondents to insist that the orders passed by the Supreme Court be necessarily quoted by applicants for availing their benefit. The respondents are bound to consider the orders passed by the Supreme Court notwithstanding that the same are not referred to

by the applicants.

18. In view of the above, the impugned order dated 07.11.2022 is set aside. The respondent is directed to forthwith process the petitioner's request for refund within a period of two weeks from today.

19. The respondent shall also consider the petitioner's entitlement to interest in accordance with law.

20. The appeal is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 31, 2023

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