(2013) 07 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application No. 10381 of 2013

Dic Fine Chemicals Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2014) 304 ELT 332

Hon'ble Judges : Sonia Gokani, J;M.R. Shah, J

Bench : Division Bench

Judgement

M.R. Shah J.

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or direction directing the respondents to immediately refund the amount of export duty collected by them with interest which deem fit and release their bank guarantee, if any, and other surety and bond, if so enforced in this regards. The petitioner is engaged in manufacture and exports of chemicals, etc. having their unit at Dahej Special Economic Zone w.e.f. 2003. A grievance which is voiced in the present Special Civil Application is that the respondents have collected export duty which is found to be illegal pursuant to the decision of this Court dated 4-11-2009 rendered in Special Civil Application No. 9656 of 2008 [2010 (249) E.L.T. 3 (Guj.)] and other allied petitions and therefore, the petitioner was entitled to refund of the aforesaid export duty. It is the case on behalf of the petitioner that they have submitted application for refund, but the same is not adjudicated upon and kept pending. It is submitted that one another unit holder approached this Court by way of Special Civil Application No. 6795 of 2013 and considering communication issued by Additional Director, Directorate General of Export Promotion (Ministry of Finance), Department of Revenue, Union of India dated 1-11-2012, this Court directed the authority mentioned in the said communication to adjudicate upon and decide the refund application. Therefore, it is requested to direct the appropriate authority as mentioned in the

communication issued by Additional Director, Directorate General of Export Promotion (Ministry of Finance), Department of Revenue, Union of India dated 1-11-2012, to adjudicate the refund application of the petitioner accordingly.

2. On advanced copy being given, Mr. Champaneri, learned Assistant Solicitor General of India, submitted that the authority mentioned in the aforesaid communication would not have any jurisdiction and/or authority to adjudicate the refund application with respect to units situated in SEZ. He also submitted that unless and until SEZ is amended by Circular, such authority cannot be vested in favour of the authority under the SEZ Act. It was submitted that even the amendment in the SEZ Act is also contemplated.

3. Considering the above, and considering the fact that the refund application is pending since many years, we granted sufficient time to the Union of India to clarify the position and inform the Court who will be the appropriate authority to decide the refund application, as there cannot be vacuum and the applications for refund cannot be kept pending for unreasonable period. However, till date and though sufficient opportunity has been given, Union of India has neither filed any Affidavit-in-reply nor even submitted before the Court who will be the appropriate authority to decide the refund application. On the contrary in Special Civil Application No. 6795 of 2013 along with the Affidavit-in-reply filed by the Assistant Commissioner (Refund), Customs House, Kandla, communication from the Directorate General of Export Promotion (Ministry of Finance), Department of Revenue, Union of India was placed on record and on the basis of which, we disposed of the aforesaid Special Civil Application directing the authorities mentioned in the said communication to decide the refund application. The communication of the Additional Director, Directorate General of Export Promotion (Ministry of Finance), Department of Revenue, Union of India dated 1-11-2012 reads as Under:-

Directorate General Of Export Promotion (Ministry of Finance), Department of Revenue, Hotel Janpath (1st Floor), Janpath, New Delhi 110 001.

F. No. DGEP/SEZ/25/2011/1551 to 1585

To,

The Commissioner of Customs (All),

The Commissioner of Central Excise (All),

The Commissioner of Central Excise & Customs (All).

Madam/Sir,

Subject: Customs-SEZ refund of excess Customs Duty paid & 5% SAD by SEZ Units-reg.

Kindly refer to DGEP letter F. DGEP/SEZ/25/2011, dated 3-5-2012 on the above subject requesting for views on issue regarding proper officer for sanction of refund of Customs Duties paid on clearance made from SEZ. The report received from the Chief Commissioners indicates that in some zones refund claims relating to excess Customs Duty paid by SEZ entities have been received. Such refund claims are reportedly not being disposed of by the C.B.E. & C. field formations on the ground that as per Section 27 of the Customs Act, 1962 all refund of Customs duties are to be dealt with by Deputy/Asst. Commissioner of Customs in whose jurisdiction the goods are imported and that the refund claims that arise out of such Bills of Entry should be submitted to the Specified Officer of the SEZ not to any officer in or field formation. The proper officer to decide such refund claims is Special Officer as defined in the SEZ Rules. The Board''s Circular No. 53/2005-Customs, dated 29-12-2005 on administrative control was issued before the SEZ Rules came into force in 2006. As per Section 51 of the SEZ Act (Act to have overriding effect), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in with other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. On the other hand, the SEZ officers are not accepting/ disposing off refund claims due to lack of any provision in the SEZ laws to deal with refund claims.

2. In view of the above, the matter has been taken up with Department of Commerce for incorporation of provisions relating to refund as well as appeal and review in the SEZ law to ensure disposal of cases related to these issues. In the light of the same it is requested that in case any such refund application/request is received or is pending, these may be returned to the concerned parties and they may be suitably advised to approach the Department of Commerce as the issue has already been taken up with DOC by DOR for speedy settlement of their cases. Similarly, if any appeal/request for accepting appeal is received or is pending, the parties may be similarly advised to approach DOC for settlement of their case.

This issues with the approval of Member (Customs/EP)

Yours faithfully,

Sd/- 1-11-2012

(Jitendra Kumar) I/C. Addl. Director

1-11-2012.

Under the circumstances and so long as the order passed by this Court dated 19-6-2013 passed in Special Civil Application No. 6795 of 2013 stands, we dispose of the present Special Civil Application by directing the authority mentioned in the communication dated 1-11-2012 to adjudicate, decide and dispose of the refund application of the petitioner in accordance with law and on merits at the earliest However, it is clarified that in case order passed by this Court dated 19-6-2013 passed in Special Civil Application No. 6795 of 2013 is reviewed and/or modified and/or the Union of India comes with a case that any appropriate authority other than the authority mentioned in the communication dated 1-11-2012 is the authority and/or empowered to decide the refund application, an appropriate review application may be submitted.

4. With this present Special Civil Application is disposed of. Direct Service is permitted.

