**(2016) 09 MAD CK 0094**

**In the Madras High Court**

**Case No :** Writ Petition No. 35500 of 2015

Enterprises International Ltd. APPELLANT

Vs

Assitt. C.C. (Exports), Chennai RESPONDENT

**Date of Decision :** 15-09-2016

**Acts Referred:**

**Citation :** (2016) 342 ELT 57

**Hon'ble Judges :** T.S. Sivagnanam, J.

**Bench :** Single Bench

**Advocate :** Shri A.P. Srinivas, SC, for the Respondent; Shri S. Murugappan, Counsel, for the Petitioner

**Final Decision :** Disposed Off

# Judgement

T.S. Sivagnanam, J. - Heard Mr. S. Murugappan, learned Counsel appearing for the petitioner and Mr. A.P. Srinivas, learned Standing Counsel appearing for the respondent.

2. The petitioner-company has come forward with this Writ Petition, praying for a direction upon the second respondent to pass orders on the refund claims submitted by them before the second respondent, since May 2013.

3. The petitioner filed a Refund Application stating that they are entitled for refund of the Special Additional Duty by way of cash refund and re-crediting the DEPB licence. The petitioner has also referred to the Board''s Circular No. 18/2013, dated 29-4-2013, directing all applications in which refund is to be granted by re-crediting in the DEPB licence, should be disposed of by 30-6-2013, which time limit was extended up to September, 2013.

4. The petitioner''s application for refund was kept pending and the petitioner has given two representations on 11-12-2013, to the second respondent and on 21-12-2013, to the first respondent. In the said representations, it was stated that since the DEPB scheme has already over, the petitioner is entitled for cash refund.

 

5. As those representations have not been considered and no orders have been passed for all these years, the petitioner filed this Writ Petition during November, 2015. Though notice was accepted by the respondents in November, 2015, and the matter was adjourned on more than six occasions, no counter-affidavit has been filed.

6. The learned counsel for the petitioner referred to the decision of the Hon''ble Division Bench of the Delhi High Court in the case of Allen Diesels India Pvt. Ltd. v. Union of India and Ors. [2016 (334) E.L.T. 624 (DB)]. In the said case, the question arose was whether under the garb of circular issued by the Central Board of Excise and Customs (''C.B.E. & C.''), the benefit granted under the notification issued in terms of Section 25(1) of the Customs Act, 1962, can be modified or amended. The notification, which was referred to in the said case was Notification No. 102/2007-Customs, dated 14-9-2007, issued in exercise of powers under Section 25(1) of the Act, wherein the additional duty of customs, known as Special Additional Duty (''SAD''), under Section 3(5) of the Customs Tariff Act, 1975, was exempted, if the goods imported were meant for subsequent sale. The Hon''ble Division Bench pointed out that the various Circulars issued by the ''C.B.E. & C.'', extending time or imposing additional restrictions for availing the exemptions cannot be legally sustained and ultra vires of the provisions of the Act and accordingly, the Circulars which were the subject matter of challenge insofar as they seek to deny the importers and exporters the refund of SAD paid by using DEPB scrips, are held to be invalid.

7. In the instant case, till date the respondents have not taken a decision on the petitioner''s application and the matter has been put in the cold storage, since 2013. Therefore, this Court is inclined to direct the second respondent to pass orders on the petitioner''s refund claim.

8. Accordingly, the second respondent is directed to consider the petitioner''s application for refund dated 20-5-2013, along with petitioner''s representations dated 11-12-2013 and pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Needless to state that if the refund is to be granted, applicable statutory interest should also be granted.

9. The Writ Petition is disposed of accordingly. No costs.