(2015) 09 MAD CK 0163

In the Madras High Court

Case No : W.P. No. 30883 of 2015

IDS Denmed Pvt. Ltd. APPELLANT

Vs

Commissioner of Customs, Chennai RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:
Customs Act, 1962 — Section 27

Citation : (2015) 325 ELT 639

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : B. Satish Sundar, for the Appellant; Devendiran, SC, for the Respondent

Judgement

R. Mahadevan, J.—Heard the learned counsel for the petitioner and Dr. Devendiran, learned Standing Counsel who took notice for the respondents and with their consent, the main writ petition itself is taken up for disposal. The petitioner has come forward with this writ petition challenging the order of the second respondent dated 6-8-2015 and to direct the respondents herein to disburse the refund amount of Rs. 3,11,952/- with interest at appropriate rates.

2.1 Petitioner company is a Private Limited Company, which involved in the business of import and local sale of medical equipments, surgical instruments, surgical and medical formulations etc., and its unit functions from Mayapuri Industrial Area-I, New Delhi. The petitioner entity is assessed to local value added tax, on its local sale and turnover besides income tax. For causing imports, the petitioner has registered with the office of the Joint Director General of Foreign Trade, Government of India, New Delhi and has been allotted Import Export Code No. 0506043835.

2.2 During the course of its business, the petitioner caused import of 84178090 - Automatic Programmable Vacuum Porcelain Furnace MODEL Classical, 84192010 Sun 16-I, Class N Dental Autoclave and 30064000 Oranwash L140 ML Tube (Dental Cement) from its supplier in China under Bills of Entry dated 5-4-2013, 17-4-2013 and 22-4-2013. They have also discharged Customs duties for the goods including Special Additional duty amounting to Rs. 3,21,744.80. After import and clearance, the said goods were sold locally on sufferance of Value Added Tax. Therefore, according to the learned counsel for the petitioner, the petitioner are eligible to claim refund of the said amount from the respondent vide notification dated 14-9-2007. In view of the same, the petitioner made an application dated 4-4-2014 for refund of the said amount, which was also taken on file by the 2nd respondent. However, the 2nd respondent, on scrutinizing the same, rejected the claim of the petitioner by the impugned order dated 6-8-2015. Aggrieved over the same, the petitioner is before this Court.

2.3 According to the learned Counsel for the petitioner, both the authorities i.e., Assistant Commissioner of Customs House and Air Cargo Complex have concurrent jurisdiction over the ports as well as the Airport under Notification No. 15/2012-Cus./(NT) , dated 7-3-2002. Had an opportunity of hearing been given to the petitioner, all these facts could have been established before the authority. On the other hand, without giving an opportunity, the impugned order came to be passed. Further, the learned Counsel for the petitioner placing reliance on the Judgment reported in , 2012 (284) E.L.T. 218 (Commissioner of Customs, Chennai v. Drive India Enterprise Solutions Ltd.) submitted that in the event of the 2nd respondent finding that he had no jurisdiction to entertain the refund claim, he ought to have pointed out the same to the petitioner by issuing deficiency memo, which has not been done. Further, having found that the refund claim of the petitioner was in order in all aspects, the 2nd respondent ought to have transferred the files to the office of the Assistant Commissioner of Customs (Refunds) at Air Cargo Complex, Meenambakkam, Chennai. In these circumstances, it is useful to extract the relevant passage of the judgment cited above, which reads as follows:-

"5. We find from Section 27 of the Customs Act, 1962, that a person claiming refund can make an application to the AC/DC of Customs, it is implied that it should be filed before AC/DC having jurisdiction. We also find that under the Notification No. 15/2002-Customs (N.T.) , dated 7-3-2002 (as amended), against S. No. 7 in the table annexed thereto, the jurisdiction of AC/DC of Customs have been specified in terms of the jurisdiction of Commissioners of Customs (Airport & Air Cargo), Port (import) and Port (Export) at Chennai. Under Col. 3, the jurisdictions of these Commissioners have been specified to be inclusive of the Port of Chennai, Port of Ennore as well as Chennai Airport etc. From the above, it is very clear that the Commissioners of Customs in Chennai and their AC/DC of Customs have concurrent jurisdiction over the ports as well as the airport. Hence, it cannot be said that the main refund application was filed before the AC/DC of customs, who did not have jurisdiction over the Airport and Air Cargo Complex. It would, of course, have been expedient if the appellants have filed the refund claim before the DC/AC at the Air Cargo as is done normally. Similarly, the DC/AC in the Customs House could have promptly transferred the said claim to the DC/AC in the Air Cargo. However, the order of the lower appellate authority transferring the refund claim to the dealing Assistant/Deputy Commissioner in the Air Cargo complex cannot be said to be not legal and proper, even though he has passed the said order or other reasons. Accordingly, we uphold the impugned order and dismiss the appeal filed by the department. The stay application filed by the department also stands disposed of."

2.4 The learned counsel for the petitioner further submitted that the Commissioner of Customs have concurrent jurisdiction and hence, there is no impediment for the authority to consider the claim of the refund and on that basis prayed that the impugned order is liable to be quashed.

3. The learned Standing Counsel appearing for the respondents submitted that pursuant to Clause 2(c) of Notification No. 102/2007-Cus., dated 14-9-2007, the jurisdictional Assistant Commissioner alone shall sanction and refund the claim made by the assessees. In view of the same, the learned Standing Counsel fairly submitted that the petitioner may be directed to file necessary refund claims before the jurisdictional Assistant Commissioner and on receipt of the same, the same shall be considered and to that effect necessary directions may be issued by this Court.

4. On considering the submissions made by the learned counsel on either side and upon perusing the materials available on record, this court is of the view that the impugned order dated 6-8-2015 is liable to be set aside and accordingly, the same is set aside. The 2nd respondent is directed to send the original refund application submitted by the petitioner to the Assistant Commissioner of Customs (Airport and Air Cargo). The petitioner is also permitted to submit a copy of the refund application to the Assistant Commissioner of Customs (Airport and Air Cargo) along with the copy of this order, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the Assistant Commissioner of Customs (Airport and Air Cargo) shall consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter. It is made clear that if the petitioner fails to avail this opportunity, it is open to the respondents to pass appropriate orders. The writ petition is disposed of with the above directions. No costs.