

(2017) 12 MAD CK 0114
In the Madras High Court
Case No : 32596 to 32598 of 2017

Same Deutz-FahrIndia (P) Ltd

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 14-12-2017

Acts Referred:

Citation : (2017) 12 MAD CK 0114

Hon'ble Judges : T.S.Sivagnanam

Bench : SINGLE BENCH

Advocate : T.S.Sivagnanam

Final Decision : Disposed Off

Judgement

1. The petitioner filed these writ petitions for the following reliefs: W.P.No.32596 of 2017 has been filed challenging the Policy Circular issued by the second respondent which denies the Terminal Excise Duty (TED) refund contrary to policy provisions and Foreign Trade (Development and Regulations) Act, 1995. W.P.Nos.32597 and 32598 of 2017 have been filed challenging the rejection letter issued by the third respondent rejecting the claim for refund filed by the petitioner.

2. So far as W.P.No.32596 of 2017, the petitioner, on instructions, would submit that the petitioner is willing to give up the challenge to the impugned Circular as their endeavour is only to request the respondents to consider their application for refund. Thus, recording the said submission, W.P.No.32596 of 2017 is dismissed.

3. With regard to the relief sought for in W.P.Nos.32597 and 32598 of 2017, the petitioner has challenged the orders passed by the third respondent rejecting the petitioner's claim for refund of Terminal Excise Duty (TED). After hearing the learned counsels for the parties and perusing the materials placed on record, it has to be pointed out that identical orders were the subject matter of challenge in W.P.Nos.23507 to 23509 of 2014 and in the said cases also, the petitioner had

given up the challenge to the policy circular and pursued the other two writ petitions wherein the refund claim were rejected. The Court after taking into consideration the decision of this Court in the case of Raja Crowns and Cans Pvt. Ltd. vs. Union of India reported in 2015 (317) E.L.T. 40 (Mad), the decision of the Hon"ble Division Bench of the High Court of Bombay in the case of Sadokz Pvt. Ltd., vs. The Union of India and others reported in 2016-TIOL-1753-HC-MUM-CUS and the decision of the Hon"ble Division Bench of the High Court of Delhi in the case of Kondoi Metal Powers Mft. Co. Pvt. Ltd., vs. Union of India reported in 2014 (302) E.L.T. 209 (Del), allowed the writ petitions and directed the authority to consider the refund claim. The operative portion of the order reads as follows:

5.At this juncture, the learned counsel for the fourth respondent/Commissioner of Central Excise, pointed out that the Policy Circular has been upheld by the Hon"ble Division Bench of the High Court of Bombay in the case of SADOKZ PVT LTD., v. THE UNION OF INDIA AND ORS [2016-TIOL-1753-HCMUM- CUS]. At this stage, it would be relevant to point out that some what an identical issue was considered by this Court in the case of RAJA CROWNS AND CANS PVT. LTD., v. UNION OF INDIA AND ORS [2015 (310) E.L.T.40(Mad.)]. In the said Writ Petition, the prayer sought for was to quash the decision taken by the Policy Interpretation Committee of the DGFT dated 04.12.2012. In the said meeting, the question which fell for consideration was whether the Terminal Excise Duty (TED) paid by DTA unit on supplies made to 100% EOU should be interpreted in the manner sought for the petitioner. The Court after taking into consideration the decision of the Hon"ble Division Bench of the Delhi High Court in the case of KONDOI METAL POWERS MFT. CO. PVT. LTD., v. UNKON OF INDIA [2014 (302) E.L.T. 209(Del), allowed the Writ Petition. At this stage it would be beneficial to refer to the operative portion of the order in RAJA CROWNS AND CANS PVT. LTD., which reads as follows:

9.After hearing the learned counsel for the parties and perusing the materials placed on record, it is seen that an identical set of facts, the Division Bench of the Delhi High Court took a decision in favour of the manufacturer. In fact, in the said case arose out of a decision taken pursuant to the resolution dated 04.12.2012 which is impugned in this writ petition. Therefore, the cause of action in the case before the Delhi High Court was the impugned resolution. Therefore, the decision rendered by the Delhi High Court binds the respondents and the Delhi High Court quoted with the approval in the decision of the Division Bench of the Calcutta High Court in JDGFT V. IFGL Refractories Limited (cited supra). At this stage, it would be beneficial to refer to the operative portion of the Judgment:

"8.It would thus be seen that supplies made to EOUs in terms of para 8.2(b) are entitled to be regarded as deemed exports. The benefits for deemed exports include inter alia exemption from TED where supplies are made against ICD (a term which means "International Competitive Bidding"). In the present case, concededly, the petitioner did not make any supplies against the ICD. Therefore, it would be covered by latter part of para 8.3(c), i.e. Cases where refund of TED will be given. This intention is given effect by the second entry in column (a) of

para 8.4 read with corresponding benefits spelt-out in column (c) which states that entitlement in terms of para 8.3 to refund is permissible. The eligibility for refund, therefore, would be in terms of these provisions and the unit has to apply for such refund under para 8.5.

9.The authorities in this case appear to have proceeded to make an order adverse to the petitioner and proceeded to hold that the petitioner was disentitled to the benefit of refund in view of some clarification given by the Policy Interpretation Committee, in its meeting of 04.12.2012 to the effect that "refund of CENVAT credit provisions are available under Excise rules and CENVAT rules which should be availed of rather than claiming refund". This reasoning appears to have prevailed with the Policy Relaxation Committee as well in this case. This Court is unable to comprehend the rationale of the decision of the second and third respondents who also seem to have suggested that the petitioner should approach the DGFT for appropriate relief or clarification. Neither of the authorities dispute that the petitioner supplied goods to the EOU at the relevant time. Its entitlement, therefore, was defined in terms of the existing policy, i.e. Refund in terms of paras 8.2, 8.3, 8.4 and 8.5 of the 2009 Policy as discussed above. That a subsequent amendment was made to the existing regime which in effect liberalized the position further and exempted payment of TED altogether cannot surely be a reason for denying the scheme for refund of payment already made. The Court also is unable to see the reason why the respondents were of the view that refund claim or benefit under the CENVAT regime under the Central Excise Act or the other statutory schemes framed under it is available. In this Court's opinion, that regime operates in its own terms and is independent of the rights and liabilities of the petitioner and the respondents under the import-export policies framed under the 1992 Act. This Court notices that its reasoning is fortified by the decision of the Division Bench of the Calcutta High Court in JDGFT V. IFGL Refractories Limited, 2002 (143) ELT 294 (Cal). There, the Court ruled that once the supply of goods falls within the category of deemed export, the unit would be entitled to refund of TED.

10.In view of the above discussion, the impugned orders are hereby quashed. The respondents are hereby directed to process and pass appropriate orders in accordance with the 2009 policy in respect of the petitioner's refund claims made through its applications dated 29.08.2012 and 16.11.2012 within three months from today. The writ petition is allowed in the above terms. No costs."

10.In the light of the above finding, it is held that the issue involved in this writ petition is covered by the decision of the Delhi High Court and since the case before the Delhi High Court arose out of the order which was passed pursuant to the resolution impugned in this writ petition, the decision of the Delhi High Court binds the respondents. Thus, following the above referred decision, this Writ Petition is allowed and the impugned order is quashed and the third respondent is directed to process the refund claim in accordance with the 2009 Policy by taking into consideration the petitioner's refund application dated 16.08.2010

and pass appropriate orders in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed."

6.As noticed above, the decision of the Delhi High Court would squarely cover the case on hand, as the Court took into consideration of the fact that subsequent amendment was made to the existing regime which in effect liberalised the position further and exempted payment of TED altogether cannot surely be a reason for denying the scheme for refund of payment already made.

7.In the light of the above -

(i) W.P.Nos.23507 & 23508 of 2014 are allowed and the impugned order is set aside and the third respondent is directed to process the refund claim in accordance with 2009 Policy, by taking into consideration the petitioner's refund Application and pass appropriate orders, within a period of three months from the date of receipt of a copy of this order.

(ii) In the light of the above direction, there would be no necessity to test the correctness of the Policy Circular No.16 dated 15.03.2016 and accordingly, W.P.No.23509 of 2014, stands closed. No costs. Consequently, connected Miscellaneous Petitions are closed.

4. Learned counsel appearing for the respondents does not dispute the above legal position.

5. Thus, by following the writ petitions referred above, W.P.Nos.32597 and 32598 of 2017 are allowed, the impugned orders are set aside and the third respondent is directed to process the refund claim in accordance with 2009 Policy by taking into consideration the petitioner's refund application and pass appropriate orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

6. Accordingly, W.P.No.32596 of 2017 is dismissed and W.P.Nos.32597 and 32598 of 2017 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.