(2014) 11 MAD CK 0105

In the Madras High Court

Case No : Writ Petition No. 29573 of 2014

Senka Carbon Pvt. Ltd. APPELLANT

Vs

Assistant Commissioner of Cus. (Refunds) RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2015) 319 ELT 44

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

Bench : Single Bench

Advocate : Hari Radhakrishnan, for the Appellant; K. Mohana Murali, SPCCG, for the Respondent

Judgement

T.S. Sivagnanam, J.?The petitioner seeks for issuance of writ of mandamus to direct the respondent to sanction the refund due to him in the light of the Order-in-Appeal C. Cus. No. 1481/2013, dated 18-10-2013 passed by the Commissioner of Customs (Appeals). The case of the petitioner is that the Commissioner of Customs (Appeals) by order dated 18-10-2013 allowed his appeal, preferred against the order-in-original No. 5300 of 2006, which was passed rejecting the refund claim as not maintainable unless the petitioner challenges the order of assessment. In fact, the order dated 18-10-2013 passed by the Commissioner of Customs (Appeals) was pursuant to an order passed by the Tribunal remanding the case for fresh consideration. The petitioner states that the Department did not file any appeal to the Tribunal as against the order dated 18-10-2013. Therefore, it is submitted that the petitioner is entitled for refund.

2. According to the petitioner, the refund application was made as early as in 2004 and in spite of petitioner''s succeeding before the Commissioner, till date refund has not been granted. In this regard, the learned counsel for the petitioner has made representation on 1-11-2013 and 25-11-2013. Since the same have not been considered, the petitioner is before this Court.

3. The learned Senior standing counsel, while accepting the notice on behalf of the respondent, has submitted that it is not clear as to whether any appeal has been filed by the Department before the Tribunal as against the order dated 18-10-2013 and if the appeal has been filed by the Department, then the question of granting refund at this stage does not arise.

4. After hearing the learned counsel for the parties and after perusing the materials placed on record, this Court is of the view that the petitioner should be informed in writing by the respondent as regard the fate of his refund claim. If the department has preferred an appeal as against the order dated 18-10-2013 passed by the Commissioner (Appeals), the petitioner should be put on notice. According to the petitioner, till date, no appeal has been filed to the Tribunal.

5. In the light of the above facts, there will be a direction to the respondent to consider the petitioner''s request made by the petitioner through their counsel dated 1-11-2013 and 25-11-2013 and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

6. The petitioner is directed to enclose a copy of the representation as well as a copy of the original refund application along with the copy of this order and forward the same to the respondent. With the above direction, this writ petition is disposed of. No costs.

