



2023:KER:42612

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

WP(C) NO. 7262 OF 2016

PETITIONER/S:

M/S. ELITE GREEN PVT LTD
AGED 41 YEARS
BUILDING NO.IX/433, 434, 435 KUTTANELLUR P.O., THRISSUR-680
014, REPRESENTED BY ITS DEPUTY MANAGER C. SANTHOSH KUMAR

BY ADVS.
SRI.P.A.AUGUSTIAN
SRI.M.A.BABY

RESPONDENT/S:

- 1 UNDER SECRETARY
(CUSTOMS-III/VI)/GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, CENTRAL BOARD OF EXCISE AND
CUSTOMS NORTH BLOCK, ROOM NO.253-A, ENW DELHI.
- 2 THE DIRECTOR GENERAL OF FOREIGN TRADE
UDYOG BHAVAN, NEW DELHI.
- 3 COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, W/ISLAND, COCHIN-9.
- 4 ASSISTANT COMMISSIONER OF CUSTOMS REFUND
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE,
COCHIN-09.

BY ADVS.
SMT.C.G.PREETHA, CGC
S.KRISHNA



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-2-

SMT.PREETHA S. NAIR, SC, CENTRAL BOARD OF EXCISE & CUSTO
SMT.C.G.PREETHA CGC
SRI.SAIBY JOSE KIDANGOOR
SMT.PREETHA S. NAIR, SC, CENTRAL BOARD OF EXCISE amp CUSTO

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON
25.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

Heard Mr Baby M A, learned counsel for the petitioner, Ms S Krishna, Central Government Counsel for respondents 1 and 2 and Ms Preetha S Nair learned counsel for respondents 3 and 4.

2. The present writ petition under Article 226 of the Constitution of India has been filed for a writ of mandamus directing the respondents to sanction the refund claim of 4% of Special Additional Duty (for short, 'SAD') against the goods imported under several Bills of Entries in the year 2014 and 2015 as mentioned in the writ petition.

3. The petitioner claims to be a leading food processing unit in India and exports processed food. The petitioner procures raw materials locally to process the food



items for export. Some raw materials are also imported to meet export obligations.

3.1 The Director General of Foreign Trade (for short, 'DGFT') of the Government of India has issued notification No.102/2007-Cus dated 14.09.2007, whereby 4% duty collected as an additional duty while importing goods and such amount collected from the importers were to be returned to the importer subject to production of evidence regarding payment of sales tax to customs authorities. The DGFT of the Government of India has come out with another Circular No.18/2013-Cus dated 29.04.2013 regarding the refund of 4% SAD. The said notification provides that for refund of 4% of SAD, the importer should make an initial payment of 4% SAD in cash instead of scrips. A decision was also taken that no recrediting should be done if such payment was made using scrips. In other words, in future, exporters should pay the SAD



component in cash if they would like refund of 4% of SAD.

3.2 Learned Counsel for the petitioner submits that despite issuing the said notification, the petitioner paid the 4% SAD in scrips as the petitioner was unaware of the said notification. He further submits that public notice should have been given regarding this notification/Circular No.18/2013-Cus dated 29.04.2013 by the Cochin Port. It is, therefore, submitted that as per the mandate of the said Circular, public notice and Standing Order were required to be issued for the guidelines of the trade and the staff, which was not done, and that resulted in the petitioner not paying the SAD in cash but in scrips and which was accepted by the Customs Authorities.

3.3 The petitioner's claim for refund of SAD @ 4% has not been processed on the ground that the petitioner did not pay SAD @ 4% in cash in terms of Circular No.18/2013-Cus.



dated 29.04.2013. Learned Counsel for the petitioner submits that when the customs authorities themselves were not aware of the notification, the petitioner could not have been expected to be aware of the said notification in the absence of public notice of the said notification. He, therefore, submits that this Court may direct the respondents to process the petitioner's claim for refund of 4% SAD on the Bills of Entries as mentioned in the writ petition for the year 2014 and 2015.

4. On the other hand, the learned Counsel appearing for respondents 1 and 2 submits that the said Circular was published on the official website of the DGFT. Once a Circular or notification is published on the website of the Department or the DGFT, it is sufficient public notice. The petitioner cannot say that there was no public notice of the Circular once it was published on the official website of the DGFT.

5. Learned Counsel appearing for respondents 3 and 4



also supports the contention of learned Counsel for respondents 1 and 2 and states that the notification was published on the official website of the DGFT, and the publication of the notification on the official website is sufficient public notice. Therefore, the petitioner cannot claim that no public notice was given regarding the said circular/notification.

6. Learned Counsel for respondents 3 and 4 further submits that when the Circular itself provides that if any exporter claims refund of 4% SAD, the amount should have been paid in cash. Admittedly, the petitioner did not pay the said amount in cash but in scrips. Therefore, under the provisions of the said Circular, he was not entitled to the refund of 4% SAD on the Bills of Entries in the year 2014-2015.

7. I find substance in the submissions of the learned Counsel for the respondents. Admittedly, when the petitioner



has not paid the 4% SAD in cash but in scrips despite Circular No.18/2013-Cus. dated 29.04.2013, he was not entitled to refund of 4% of SAD. I do not find substance in the submission of the learned Counsel for the petitioner that the public notice was not issued regarding Circular No.18/2013-Cus. dated 29.04.2013. If the said Circular was published on the official website of the DGFT, it amounts that the public notice was given about the Circular.

8. In view thereof, I find no merit and substance in the present writ petition, which is hereby dismissed. Interim order, if any, stands vacated.

sd/-

DINESH KUMAR SINGH
JUDGE



APPENDIX OF WP(C) 7262/2016

PETITIONER EXHIBITS

EXHIBIT P1: TRUE COPY FO THE NOTIFICATION
NO.102/2007.

EXHIBIT P2 SERIES TRUE COPIES OF THE REFUND
APPLICATIONS DATED 27/05/14, 18/03/15, 17/06/15
AND 10/10/15.

EXHIBIT P3: TRUE COPY OF THE LETTER DATED 7.7.15.

EXHIBIT P4: TRUE COPY OF THE CIRCULAR NO.18/2013
DATED 29.4.2013.

EXHIBIT P5: TRUE COPY OF THE PUBLIC NOTICE
NO.18/2013 DATED 16.5.2013.

EXHIBIT P6: TRUE COPY OF THE LETTER CIN
U01111GJ2008 PTC054027 DATED 8.10.15.

EXHIBIT P7: TRUE COPY OF THE LETTER DATED 16.1.16.

EXHIBIT P8: TRUE COPY OF THE LETTER
NO.FS18/383/2014-R DATED 7.12.2015.