IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM

THE HON'BLE DR.JUSTICE **ANITA SUMANTH**

W.P Nos.27690, 27692, 27695, 27696 & 27698 of 2018

M/s.Chaizup Beverages LLP,
Represented by its Authorized Signatory,
Mr.Shiv Kumar Agarwal,
2/280, Pannimadai Thudiyalur,
Coimbatore- 641 017 .... Petitioner in all WPs

Vs.

Deputy Commissioner of GST & Central Excise,
Coimbatore I Division, 1441,
Elgi Equipments Building,
Ground Floor, Trichy Road,
Coimbatore – 641 018. .... Respondent in all WPs

PRAYER in all WPs: PETITION filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus to call for the records pertaining to the impugned Provisional Release Order dated 14.08.2018, 24.08.2018, 10.09.2018, issued in C.No.V/GST/212/2018-ITC, C.No.V/GST/206/2018-ITC, C.No.V/GST/207/2018-ITC, C.No.V/GST/227/2018-ITC, C.No.V/GST/208/2018-ITC Rf in Sanction Nos.163/2018, 173/2018, 174/2018, 177/2018, 178/2018 and quash the same and further direct the respondent to sanction the provisional refund in terms of Rule 91 of the Central Goods and Service Tax Rules, 2017 without making any adjustment.

For Petitioner : Mr.Hari Radhakrishnan in all WPs
For Respondent : Mr.S.R.Sundar Senior counsel in all WPs

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.S.R.Sundar, learned standing counsel for the respondent.

2. The petitioner is an exporter of tea and an assessee under the provisions of the Goods and Service Taxes Act, 2017 (in short 'Act'). The petitioner purchased sacks and tea from various tea factories remitting IGST, CGST and SGST thereupon. The tax so paid was credited in the Electronic Credit

Ledger. Exports were undertaken without payment of IGST on execution of a Letter of Undertaking and under a claim for drawback. The petitioner sought a refund of the drawback sanctioned comprising the customs portion of All Industry Rate. The claim was sanctioned and the drawback paid over to the petitioner.

3. Three refund applications, all dated 30.01.2018, were filed seeking refunds of amounts of Rs.37,003/-, Rs.17,58,017/- and Rs.10,22,900/- for the periods July, August and September, 2017 respectively. The Assistant Commissioner of GST & Central Excise, Coimbatore I Division, Coimbatore sanctioned 90% of the amounts claimed on provisional basis, passing three provisional orders of refund. The amounts were sanctioned and duly received by the petitioner.

4. Thereafter, a show cause notice dated 02.04.2018 was issued by the Assistant Commissioner of GST & Central Excise, Coimbatore I Division on the ground that the claims that had been erroneously sanctioned as regards IGST and CGST. The authority was of the view that the claims were liable to be rejected as, according to the respondent, the petitioner had availed drawback at a higher rate than permissible, in terms of Section 54 (3) of the Act.

5.The petitioner filed an objection dated 24.04.2018 stating that the commodity 'tea' did not attract Central Excise Duty, the drawback sanctioned represented the Customs Duty component alone and hence the claim and sanction of the refund of the ITC was in order. After affording opportunity of hearing to the petitioner, the proposal in the show cause was confirmed and the refund originally sanctioned was reversed as regards IGST and CGST vide three separate orders, all dated 14.06.2018, bearing Order Nos.95, 96 and 97 of 2018 respectively. The refunds sanctioned were ordered to be recovered.

6. The petitioner filed appeals challenging the orders of rejection before the Commissioner of GST & Central Excise, Coimbatore on 04.08.2018 along with a deposit of 10% of the disputed amount by way of statutory pre-deposit made on 09.08.2018. A copy of the challan evidencing the same is available on record. The appeals are pending consideration.

7.While this is so and pending the appeals, the petitioner filed refund claims for the unutilized credit for the months March to July, 2018 on 20.08.2018 and 03.09.2018. The claim was for amounts of Rs.13,16,976/- for the month of March 2018, Rs.7,69,123/- for the month of April, 2018, Rs.8,22,062/- for the month of May, 2018, Rs.10,68,984/- for the month of June, 2018 and Rs.7,66,980/- for the month of July, 2018. Provisional refund orders dated 14.08.2018, 24.09.2018 (two ordes)and 03.09.2018 (two orders) have been passed by the respondent without affording any prior opportunity to the petitioner and restricting the refunds. The respondent has sanctioned only an amount of Rs.7,77,894/- after adjusting Rs.4,07,384/- towards outstanding dues for the month of March, 2018, Rs.5,09,680/- after adjusting Rs.1,65,616/- towards outstanding dues for the month of April, 2018, Rs.3,29,613/- for the month of May, 2018 after adjusting a sum of Rs.73,237/- and Rs.3,29,613/- towards the outstanding dues. For the month of June, 2018, provisional refund of Rs.5,96,215/- was sanctioned after adjusting of Rs.5,820/- and Rs.3,14,225/-. For the month of July, 2018 an amount of Rs.5,40,773/- was sanctioned after adjusting of Rs.1,03,383/-.

8. The counter filed by the respondent proceeds on the basis that the respondent was unaware of the filing of the appeal by the petitioner challenging

order dated 14.06.2018 reversing the refunds sanctioned. The counter also states, and erroneously, at paragraph 15 that, in any event, there was no stay of the order of reversal of the refunds granted. This averment is contrary to the provisions of Section 107(7) of the CGST Act, 2017 which provides that where 10% of disputed amount has been remitted by way of pre-deposit, the recovery of the balance amount shall be deemed to be stayed. The provision is extracted hereunder:

> Section 107- Appeals to Appellate authority.
>
> (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the ablance amount shall be deemed to be stayed.

9. In the present case, the petitioner has admittedly remitted 10% of the amounts demanded in order dated 14.06.2018 on 09.08.2018 as pre-deposit and no recovery shall be effected in regard to the balance of the demands that shall be deemed to be under an order of stay.

10. In the light of the legal position as admitted above, the adjustment of the refund is not proper. Mr.Sundar, learned counsel for the respondent, fairly, does not defend the impugned order but only requests some time to refund the amount wrongly adjusted. He is granted a period of three (3) weeks from the date of receipt of the copy of this order to do so.

11. These Writ Petitions are allowed. No costs.

05.02.2019

Index : Yes/No
Internet : Yes/No
speaking order/ non-speaking order
rkp

To

Deputy Commissioner of GST & Central Excise,
Coimbatore I Division, 1441,
ElgiEquipments Building,
Ground Floor, Trichy Road,
Coimbatore – 641 018.

DR.ANITA SUMANTH, J.

rkp

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