BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.08.2025**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.7402 of 2024
and
W.M.P(MD)Nos.6817 & 6820 of 2024

M/s.G.E.India Industrial Pvt. Ltd.,
Represented by its Authorised Signatory
Dayanad Kamalakar Puri .. Petitioner

Vs

1.The Commissioner (Appeals),
Office of the Commissioner of GST and Central Excise(Appeals),
Coimbatore,
Circuit Office @ Trichy,
No.1, Williams Road,
Cantonment,
Trichy- 620 001.

2.The Commissioner,
Customs House,
Thoothukudi- 628 004. .. Respondents

[R2 is impleaded vide Court order dt.25.7.2024 in WMP(MD)No. 10414/2024 in WP(MD)No.7402/2024 by CSNJ]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Appeal No.19/2023-TTN(CUS)(D)-App in file No.C24/05/2021/TTN (CUS)(D)-APP dated 28.06.2023 passed by the first respondent and quash the same.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.R.Nandha Kumar,
Senior Standing Counsel

ORDER

Although the petitioner has an alternate remedy before the CESTAT, I see no point in relegating the petitioner to file appeal. In my view, no useful purpose will be served by relegating the petitioner to work out the appellate remedy once again considering the fact that the dispute between the imports made by the petitioner during March 2011 to May 2011 and the refund claims were filed during May 2012 to October 2012.

2. The petitioner is before this Court against the impugned order in Appeal No.19/2023-TTN(Cus)-App in file No.C24/05/2021/TTN(Cus)(D)-APP dated 28.06.2023.

3. By the impugned order, the respondent as the Appellate Commissioner has allowed the departmental appeal filed by the Assistant Commissioner of Customs, Review, Customs House, Tuticorin in Appeal No. 19/2023-TTN(Cus)-App against the Order-in-Original 79/2021 dated 16.11.2021 passed earlier by the Assistant Commissioner of Customs, Refund, Customs House, Tuticorin, pursuant to Final Order No.43031/2018 dated 04.12.2018 the final order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai in C/42230/2014.

4. The brief facts of the case are that the petitioner is engaged in developing wind energy park and therefore imported components for wind turbine and wind energy machines in the wind energy Park developed by the petitioner. The petitioner had imported major junk of such machineries from the Tuticorin Port between March 2011 and November 2011. The petitioner however ended up filing 11 different claims in respect of 16 bills of entry before the Chennai Customs. They were however filed in time. The refund claim were however rejected by the Deputy Commissioner of Customs (Port-Export), Chennai in the first round vide Order-in-Original No.21887/2013

dated 17.09.2013.

5. Aggrieved by the aforesaid order by the Deputy Commissioner of Customs Order-in-Original No.21887/2013 dated 17.09.2013, the petitioner filed appeal before the Appellate Commissioner in C3/1187/R/2013-SEA. The Appellate Commissioner vide Order-in-Appeal No.1264/2014 dated 24.07.2014 also rejected the appeal of the petitioner. Thus the petitioner filed Customs Appeal No.C/42230/2014-DB before the CESTAT. The said appeal came to be allowed by CESTAT by way of remand vide Final Order No. 43031/2018 dated 04.12.2018. Operative portion of the order of the CESTAT reads hereunder:

> *"9. In several decisions, it has been held by various Courts that the prosecution of the case before the wrong forum has to be excluded for considering the limitation. Taking all these aspects into consideration, we are of the view that the appellant has to be given a further chance to present their claims before the correct jurisdictional authority. On weighing the facts as well as the law on the issue, we are of the opinion that the matter requires to be remanded to the Customs House, Tuticorin, who is directed to process the refund claims in*

accordance with law. The appeal is allowed by way of remand to the Customs House, Tuticorin, when the refund claims have been filed within the time and it also conforms all other legal requirements, the rejection by the Refund Processing Authority on lack of jurisdiction after sleeping over the claim for almost one year in our view would be gross injustice to an assessee. The argument of the learned Authorised Representative that the appellants have deliberately filed the refund claims before the Chennai Customs House in order to circumvent the limitation in case of a few of the refund claims does not appear to be attractive or acceptable. From the Table shown above, it is clear that some of the refund claims have been filed much earlier than the due date for filing the claim. Only three of the refund claims are seem to be filed before one day of the due date. The appellant has made the claims before the authority well within the time."

6. It is in this background, in the second round the Deputy Commissioner allowed the refund claim vide Order-in-Original No.79/2021 dated 16.11.2021 and sanctioned the refund claim for a sum of Rs. 7,00,21,132/-(Rupees Seven Crore Twenty One Thousand One Hundred and

Thirty Two only) being the Special Additional Duty(SAD) paid under the Customs Tariff Act, 1975 and refunded under Notification No.102/2007 Customs dated 14.09.2007.

7. Aggrieved by the same, the department reviewed the order under Section 129D(2) of the Customs Act, 1962 on 19.12.2021. Thus, it lead to filing of the appeal before the 1st respondent Appellate Commissioner in Customs Appeal No.C/05/2022-TTN-CUS-APP dated 28.06.2023, which has now culminated in the impugned order in Appeal No.19/2023-TTN(Cus)-App.

8. Reading of the impugned order indicates that the petitioner has been castigated for not filing the fresh refund claim by placing reliance of Section 27 (1-B)(b) as per which where the duty become refundable as a consequence of any judgment, decree or order or direction of the appellate authority, appellate tribunal or any Court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction. The writ petition is opposed by the respondent primarily on the ground that the petitioner has an

alternate remedy before the Tribunal under Section 128 of the Customs Act, 1962. The appellate Commissioner has not dealt with the merits of the claims otherwise in the impugned order.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

10. The petitioner has filed refund claims in time in the first round which had resulted in an adverse order of the original first authority as also the first appellate authority which was intervened by the tribunal (CESTAT) vide its final order No.43031/2018 dated 04.12.2018. The case was remanded back to the respondent for a fresh round. Pursuant to which the original authority has allowed the refund claim vide Order-in-Original No.21887/2013 dated 17.09.2013.

11. The question of pressing Section 27 (1-B)(b) will arise only where refund of duty is consequent to order of the appellate authority, Appellate Tribunal or any court, as it is evident from the reading of the language in

Section 27(1-B)(b) which reads as under:

"**Section.*27. Claim for refund of duty.—***

1. .....

(1A) .....

(1B)) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:—

(a) .....

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;"

12. The case of the petitioner has to be cooked from the prism of Section 27(1) of the Customs Act.

*"**Section27. Claim for refund of duty.—***

1.Any person claiming refund of any duty or interest, — (a) paid by him; or (b) borne by him, may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of

Customs, before the expiry of one year, from the date of payment of such duty or interest:

13. Thus, the refund claim has to be filed within one year from the date of payment of such duty or interest. In this case, after the customs duty was paid at at the time of import between March 2011 to November 2011, the petitioner was to comply the requirements of Notification No.102/2007-Cus dated 14.09.2007.

14. The limitation is one year from the date of import made provided the petitioner complies with the requirements of the aforesaid notification.

15. There is no dispute that the petitioner has borne the incidents of the customs duty to be eligible for the benefit of the aforesaid refund under the aforesaid notification. The argument that the petitioner ought to have filed a fresh refund claim in terms of Section 27 (1-B) cannot be countenanced as it would apply to the situation when refund is to be given as a consequence of order of the authorities mentioned therein. Therefore, this writ petition

deserves to be allowed. Accordingly, this Writ Petition stands **allowed**. Therefore, the impugned Order in Appeal No.19/2023-TTN(CUS)(D)-App in file No.C24/05/2021/TTN (CUS)(D)-APP dated 28.06.2023 passed by the first respondent is quashed. There shall be no order as to Costs. Consequently, connected miscellaneous petitions are closed.

11.08.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes/No

PJL

To
1.The Commissioner (Appeals),
Office of the Commissioner of GST and Central Excise(Appeals),
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2.The Commissioner,
Customs House,
Thoothukudi- 628 004.

C.SARAVANAN, J.

PJL

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