

Mittal Technopack Private Limited and Anr. Vs. The Development Commissioner and Ors.

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Court : Kolkata

Decided On : Aug-17-2017

Judge : Debangsu Basak

Appellant : Mittal Technopack Private Limited and Anr.

Respondent : The Development Commissioner and Ors.

Judgement :

W.P. No.179 of 2016 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction Original Side Mittal Technopack Private Limited & Anr. Vs. The Development Commissioner & Ors. For the Petitioners : Mr. Uday Chandra Jha, Advocate Mrs. Maheswari Sharma, Advocate Mrs. Tulika Roy, Advocate For the Respondents : Mr. Tapas Kumar Chatterjee, Advocate Mrs. Debjani Roy, Advocate Hearing concluded on : August 7, 2017 Judgment on : August 17, 2017 DEBANGSU BASAK, J.:- 1. The petitioners have sought for a declaration that the notices dated March 15, 2014, April 17, 2014 and October 20, 2014 are null and void. They have also demanded payment of a sum of Rs.42,81,604/- from the respondents.

2. Learned Advocate for the petitioners has submitted that, the first petitioner is an Export Oriented Unit (EOU). The first petitioner is carrying on manufacturing activity since 2006. It was receiving Central Sales Tax (CST) refund from the

Development Commissioner, Falta, Special Economic Zone. The first petitioner is entitled to reimbursement in terms of the Foreign Trade Policy framed by the Director General of Foreign Trade, under the Ministry of Commerce, Government of India. It had received reimbursement up to the last quarter of 2010-2011. However, since the first quarter of 2011-2012, the authorities are rejecting the claim for refund of Central Sales Tax. The first petitioner has a claim of Rs.42,81,604/- in respect thereof.

3. Learned Advocate for the petitioners has referred to a show-cause notice dated March 5/7, 2014 issued under paragraph 6.11(C) of the Foreign Trade Policy (FTP), 2009-2014. He has submitted that, the contention of the respondents is that, the first petitioner had purchased goods from Reliance Industries Limited and that, such vendor is a Special Economic Zone (SEZ) Unit and not a Domestic Tariff Area (DTA) Unit as per paragraph 9.21 of the FTP, 2009-2014. According to the authorities, DTA and SEZ are two separate entities. Therefore, CST reimbursement made on purchases from a SEZ Unit is not available. The first petitioner had replied thereto. He has drawn the attention of the Court to the fact that, DTA is not defined in the FTP under consideration. It is, however, defined in the Policy and Procedure of 2009-2014. He has drawn the attention of the Court to the Foreign Trade Policy for 2015-2020 and has submitted that, the authorities have now removed the anomalies and have included supplies out of SEZ Units for the purpose of reimbursement of CST. He has referred to an unreported judgment of the Madras High Court rendered on March 13, 2016 in W.P. No.15646 of 2014 (M/s. Hospira Health Care Private Ltd. v. Development Commissioner & Ors.) and has submitted that, the same issue was answered in favour of the petitioner in such judgment. The petitioner is, therefore, entitled to the reimbursement as claimed.

4. Learned Advocate for the respondents has submitted that, the petitioners have procured the goods from SEZ Unit. Under the FTP, 2009-2014 particularly paragraph 6.11 thereof, an EOU Unit will be entitled to reimbursement of CST on goods manufactured in India. The supply received by the first petitioner is from a SEZ Unit and not from a DTA Unit. Such supplies, therefore, do not come within the parameters for grant of CST reimbursement. Therefore, the first petitioner is

not entitled to the reimbursement of CST. The first petitioner has been paid in excess for a few years. The first petitioner has to refund the same. He has relied upon Chapter 9 of the FTP, 2009-2014. He has submitted that Paragraph 9.21 of the FTP, 2009-2014 stipulates that, DTA means area which is outside SEZ and EOU/EHTP/STP/BTP. He has also relied upon clause 2 Appendix 14-1-1 of the Handbook of Procedure (HBP) 2009-2014 and Office Memorandum dated April 11, 2014 to contend that, the first petitioner is not entitled to reimbursement of CST for purchases made from SEZs. In addition to such contention, learned Advocate for the respondents has relied upon Section 53 of the Special Economic Zones Act, 2005 and Rule 46(13) of the Special Economic Zones Rules, 2006.

5. I have considered the rival contentions of the parties and the materials made available on record.

6. Three show-cause cum demand notices have been issued to the first petitioner impugned herein dated March 15, 2014, April 17, 2014 and October 20, 2014. The sum and substance of the contents of such show-cause cum demand notices are that, the first petitioner is not entitled to CST reimbursement in view of the fact that, the petitioner has purchased material from a SEZ Unit. The respondents have relied upon two grounds to claim that, reimbursement of CST is not available to the first petitioner. The first ground is Paragraph 6.11(c)(i) of the FTP, 2009-2014. Paragraph 6.11 of the FTP, 2009-2014 deals with entitlement for supplies from DTA. DTA is not defined in the FTP of 2009-2014. The relevant clause is as follows:- 6.11 Entitlement for Supplies from the DTA (a) Supplies from DTA to EOU / EHTP / STP / BTP units will be regarded as deemed exports. and DTA supplier shall be eligible for relevant entitlements under chapter 7 of FTP, besides discharge of export obligation, if any, on the supplier. Notwithstanding the above, EOU / EHTP / STP / BTP units shall, on production of a suitable disclaimer from DTA supplier, be eligible for obtaining entitlements specified in chapter 7 of FTP. For claiming deemed export duty drawback, they shall get brand rates fixed by DC wherever All Industry Rates of Drawback are not available. (b) Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorisations at rates and for items mentioned in HBP. (c) In addition, EOU / EHTP / STP / BTP units

shall be entitled to following: (i) Reimbursement of Central Sales Tax (CST) on goods manufactured in India. Simple interest @ 6% per annum will be payable on delay in refund of CST, if the case is not settled within 30 days of receipt of complete application (as in paragraph 9.10 (b) of HBP). (ii) Exemption from payment of Central Excise Duty on goods procured from DTA on goods manufactured in India. (iii) Reimbursement of duty paid on fuel procured from domestic oil companies / Depots of Domestic Oil Public Sector Undertakings as per drawback rate notified by DGFT from time to time. Reimbursement of additional duty of excise levied on fuel under the Finance Acts would also be admissible. (iv) CENVAT Credit on service tax paid.

7. The Policy and Procedure for FTP, 2009-2014 defines a DTA at Paragraph 9.21 to mean area within India which is outside SEZ and EOU/EHTP/STP/BTP. The FTP for the subsequent period being 2010-2015 has kept the same policy of entitlement for supplies from DTA at Paragraph 6.11 as that of the FTP of 2009-2017. However, the Policy and Procedure for FTP for 2010-2015 specifies that, EOU will be entitled to full reimbursement of CST paid by them on purchases from SEZ also.

8. There is no reason as to say that, purchases from SEZ by an EOU will not be entitled to reimbursement of CST in terms of FTP of 2009-2014. This contention of the respondents cannot be accepted. An EOU purchasing goods from a SEZ will be entitled to reimbursement of CST in terms of FTP, 2009-2014. The first petitioner was allowed such reimbursement. The demands for refund of such reimbursement are, therefore, without any basis.

9. The next ground of denial of reimbursement of CST to the first petitioner on purchases from SEZ is an Office Memorandum dated April 11, 2014. Such Office Memorandum was challenged by the legal entity in respect which the same was issued. Such Office Memorandum was quashed by the Madras High Court in Hospira Health Care Private Ltd. (supra).

10. The two grounds of denial of the reimbursement of CST for purchases by an EOU from a SEZ in terms of the FTP20092014 does not survive. The demands for reimbursement are, therefore, without any basis. The impugned notices are, therefore, quashed.

11. W.P. No.179 of 2016 is disposed of accordingly. No order as to costs. [DEBANGSU BASAK, J.].

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