

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.04.2010

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WPC 6600/2008

BIRINDER KAUR BAJWA

..... Petitioner

- versus -

DIRECTOR (DRAWBACK) (DRAWBACK DIVISION)

DEPARTMENT OF REVENUE,

MIN OF FINANCE & ORS

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Somesh Arora with Mr Robin Chacko

For the Respondent : Mr Ravinder Agarwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is a garment exporter. From time to time, in respect of its exports, it has been realizing duty drawback under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The said duty drawback, however, is subject to the petitioner realizing the sale proceeds of the export made by it within a stipulated period of time, which has been prescribed by the Reserve Bank of India to be six months in the normal course.

2. In the present case, the period with which we are concerned is the exports made by the petitioner during the year 1996-1997. The

petitioner had made exports under 37 shipping bills and had taken duty drawback in respect of the said exports. The petitioner could not realize the export proceeds within the period of six months of the respective dates of shipment. However, the petitioner made an application for extension of the period of six months, which has been provided for realization of the export proceeds. In the meanwhile, that is, on 16.06.1999, the petitioner, at the instance of the respondents, paid back the duty drawback amount to the respondents. The amount of duty drawback, at that point of time, was Rs 14,58,368/-. The petitioner was also required to pay an amount of Rs 7,57,135/- being interest on the said amount of duty drawback paid back to the respondents. The said interest was calculated at the rate of 24% per annum. In other words, the petitioner paid an amount of Rs 22,15,503/- on or about 16.06.1999.

3. Thereafter, the petitioner received an ex-post facto extension from the Reserve Bank of India on 25.01.2001 extending the dates for realizing the sale proceeds. In the meanwhile, the petitioner had already realized the sale proceeds sometime in August to October, 2000. Thereafter, the petitioner made a request for refund of the duty drawback amount, which had been recovered on 16.06.1999 along with interest that was paid by it. The said application was dismissed by the impugned order dated 04.01.2008 by the Director (Drawback), Department of Revenue, Drawback Division, Ministry of Finance, Government of India. The reason for rejection of the petitioner's request for refund of the said amount was as under:-

“2. In this regard, I am directed to say that rule 16A(4) of the Customs, Central Excise and Service Tax Drawback Rules, 1995, prescribes a period of one year from the date of recovery of drawback, for submission of evidence regarding realization of sale proceeds. Since you had failed to produce such evidence within the prescribed period, you are not entitled for repayment of the amount of drawback.”

4. Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, which was applicable at the relevant period, reads as under:-

“16A. Recovery of amount of Drawback where export proceeds not realized:

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Regulation Act, 1973 (46 of 1973), including any extension of such period, such drawback shall be recovered in the manner specified below.

(2) On receipt of relevant information from the Reserve Bank of India, the Assistant Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within sixty days of the receipt of the said order:

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(3) Where the exporter fails to repay the amount under sub-rule (2) within the said period of sixty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub rule (2) or sub rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs to the claimant.”

5. The learned counsel for the petitioner submitted that the petitioner’s request for refund of the drawback amount was ostensibly rejected under Rule 16A(4) of the said Rules when, in fact, the said sub-rule did not at all come into play. He submitted that Rule 16A(1) itself provided that the sale proceeds in respect of the exported goods could be realized within the period allowed under the Foreign Exchange Regulation Act, 1973 “including any extension of such period”. He submitted that the Reserve Bank of India had, by virtue of its ex-post facto extension granted on 25.01.2001, extended the period of realization of the sale proceeds in respect of the exported goods. Consequently, the petitioner was entitled to the drawback amount claimed by it and since the said drawback had been recovered from the petitioner along with interest thereon despite the petitioner having subsequently obtained the ex-post facto extension, the petitioner was entitled to refund of the said drawback amount plus interest as well as interest on the entire amount paid by the petitioner on 16.06.1999.

6. The learned counsel for the respondents submitted that Rule 16A (4) did not permit the repayment of the duty drawback to the petitioner inasmuch as the petitioner had not realized the sale proceeds nor had he

produced the evidence of such realization within one year from the date of recovery of the amount of drawback, namely, 16.06.1999. It was submitted that the realizations were admittedly between August and October, 2000 and that was clearly beyond the period of one year w.e.f 16.06.1999 and, therefore, there was no question of repaying the drawback recovered on 16.06.1999 under Rule 16A(4).

7. After hearing the counsel for the parties, we are of the view that Rule 16A(4) does not at all come into play. This is so because by virtue of Rule 16A(1), no recovery of drawback was liable to be made from the petitioner in view of the fact that the petitioner had realized the sale proceeds within the extended period. The only difficulty that is being caused in this matter is because the extension granted was ex-post facto. However, we feel that this would not make any difference to the petitioner's case. The provision is very clear that unless and until the sale proceeds are realized within the initial time period allowed under the Foreign Exchange Regulation Act, 1973 or any extended period, the drawback taken by the exporter cannot be recovered. This primary condition has not been fulfilled in the present case. Thus, there is no question of the respondents retaining the amount of drawback recovered from the petitioner. We may point out that this is not a case where the exporter is claiming return of the recovered drawback amount on the ground that it has subsequently realized the sale proceeds after the period provided for such sale proceeds had expired. The petitioner has, in fact, made the realization during the extended period. Therefore, it is not a case which would fall under Rule 16A(4), which

pertains to cases where the sale proceeds are recovered from the exporters because the sale proceeds have not been received during the permissible period.

8. Consequently, the impugned order is set aside. The respondents are directed to return the amount of Rs 22,15,503/-, which was recovered from the petitioner on 16.06.1999. We also feel that the petitioner is entitled to interest on such amount. Consequently, we direct that the said amount of Rs 22,15,503/- be returned to the petitioner along with interest at the rate of 6% per annum w.e.f 25.01.2001, which is the date on which the Reserve Bank of India gave ex-post facto extension for making the realization.

The writ petition stands allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 29, 2010
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