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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4864/1999

M/S TEXCOMASH EXPORTS

..... Petitioner

Through:

Mr. A. K. Jain & Rajesh Jain,
Advocates.

versus

UOI

..... Respondent

Through:

Mr. V. C. Jha and Ms. Sonia Sharma,
Advocates.

Mr. Satish Kumar, Sr. Standing
Counsel with Mr. Chirag Bhatia,
Advocate.

+ W.P.(C) 12241/2009

TEXCOMASH EXPORTS

..... Petitioner

Through:

Mr. A. K. Jain & Rajesh Jain,
Advocates.

versus

COMMISSION OF CUSTOMS

..... Respondent

Through:

Mr. V. C. Jha and Ms. Sonia Sharma,
Advocates.

Mr. Satish Kumar, Sr. Standing
Counsel with Mr. Chirag Bhatia,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

31.10.2012

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The writ petition in both these matters seek appropriate directions and the quashing of the order dated 26.03.1999 made by the Central Government in revision, partly allowing its claim for enhancing the FOB price, for the purposes of duty draw back to Rs.242/- per unit. The facts briefly are that the petitioner in both the proceedings had entered into five contracts for shipment of readymade

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garments to the Russian Federation during the period 1993-94. The unit price in FOB terms, the exported goods are between Rs.1388/- and Rs.1422/- per set. The goods were shipped in 29 consignments. On the basis of the exports, the writ petitioner claimed duty draw back. The Assistant Commissioner who considered the application by order dated 27.07.1994, allowed the claim on a value determined at Rs.210/- per set. The petitioner's appeal to the Commissioner against this valuation was rejected. It, therefore, preferred revisional proceedings to the Central Government. The concerned Joint Secretary acting as the Revisional Authority on behalf of the Revenue, by order dated 26.03.1999 accepted the revision in part and enhanced the FOB value to Rs.242/- per set.

2. Apparently during the pendency of the revision the petitioner was granted duty draw back on the value of Rs.210/- per set in accordance with the determination of the Assistant Commissioner. Subsequent to the order of the Central Government dated 26.03.1999 – it requested for the payment of the balance i.e. the difference between Rs.242/- finally determined as FOB value for the purpose of duty draw back and the amount of ₹210/- originally granted and on the basis of which the duty draw back was actually paid. In the meanwhile, the petitioner had questioned the fixation of Rs.242/- as the proper FOB value itself by filing W.P. (C) No.484/1999. The Central Government apparently did not disburse the balance i.e. difference between Rs.242/- and Rs.210/- or Rs.32/- per unit for the purpose of duty draw back. This triggered W.P. (C) No.12241/2009. During the pendency of the first writ proceeding, sometime in January, 2000 the customs authorities issued a show-cause notice alleging that the writ petitioner had unjustifiably claimed drawback to which it was not entitled. This show-cause notice was resisted. It culminated in an adverse order-in-original (against the petitioner) dated 28.11.2003, by the Commissioner of Customs. The petitioners felt aggrieved by the order of the Commissioner, which had inter-alia ruled against the eligibility and entitlement of the petitioner to the drawback itself. Its appeal to the CESTAT was allowed by an order dated 15.03.2005. That Tribunal

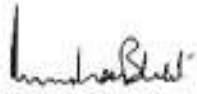
inter-alia held that the issue as to eligibility and entitlement had already been concluded heading collected against the customs authorities by the order of the Central Government dated 26.03.1999. The customs authorities, apparently aggrieved by the order of the CESTAT preferred an appeal in CA No.499/2006 under Section 129(e) of the Customs Act to the Supreme Court; that appeal is pending.

3. It is argued on behalf of the writ petitioners that the question of entitlement having been concluded, there was no reason for the Central Government to withhold the duty drawback. It is contended on its behalf by learned counsel that the methodology to be adopted for the purpose of determining value and granting duty drawback has now been concluded by the decision of the Supreme Court in *Eicher Tractors Ltd. vs Commissioner of Customs, Mumbai* 2000 (122) ELT 321 (SC) and *Siddachalam Exports Pvt. Ltd. Vs. Commissioner of Central Excise*, 2011 (267) ELT 3 (SC). It is urged that a proper application of the said methods of valuation would lead to acceptance of higher value which the petitioner has claimed i.e. Rs.1424/- per set, for the purpose of duty draw-back. Learned counsel for the customs authorities on the other hand urged that when the question or issue as to entitlement is itself at large and is pending consideration before the Supreme Court in an appeal preferred by it, it would neither be appropriate nor proper for this Court to comment or rule on the entitlement and the quantum of the duty draw-back to which the petitioner would be eligible. It is argued that such determination would have to await the final order of the Supreme Court and in these circumstances it would not be proper for this Court to make any direction.

4. This Court has considered the submissions. The arguments of the revenue regarding the propriety of this Court entering into the debate and deciding the proper method of valuation appears to be sound and justified. Although the writ petitioner had succeeded before the Central Government through the order dated 26.03.1999 the fact remains that subsequently a show-cause notice was issued seeking to cancel that entitlement and recover the amount of drawback already

paid. No doubt the Revenue lost the appeal before the CESTAT but that is not the end of the matter because the Supreme Court is seized of the basic question i.e. entitlement of the petitioner to the duty drawback. In these circumstances the only appropriate order that this Court can make is to direct the authorities that in the event of the disposal of the appeal in the present petitioner's favour, the most correct method indicated in the two judgments cited by the writ petitioner has to be applied to calculate the amount of duty drawback. In other words, in the eventuality the writ petitioner succeeds and appeal being dismissed by the Supreme Court the authority (Asst. Commissioner) shall quantify the correct FOB value for the purpose of duty drawback in accordance with law declared by the Supreme Court in the two judgments cited on behalf of the writ petitioner.

5. The writ petitions are disposed of in terms of this direction. The matter shall be remanded back to the assessing authority for disposal in the above terms. All the rights and contentions are left open.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

OCTOBER 31, 2012
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