

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 15.05.2014

+ **W.P.(C) 2469/2014**

M/S SANDHAR AUTOMOTIVES

..... Petitioner

versus

**JOINT SECRETARY, GOVERNEMENT OF INDIA,
MINISTRY OF FINANCE (DEPARTMENT OF
REVENUE) & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ranjan Mukherjee, Mr Shantanu Bhowmick and
Ms Aparajita Mukherjee.

For the Respondent: Mr Amrit Pal Singh for R-1.
Ms Sonia Sharma, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, praying for setting aside of an order dated 31.05.2013 passed by the Joint Secretary to the Government of India under Section 35EE of the Central Excise Act, 1944. The order dated 31.05.2013 is hereinafter referred to as the 'impugned order'. By the impugned order, the respondent has upheld the order of Commissioner (Appeals) dated 30.03.2011 and held that the petitioner was not entitled to rebate under Rule 18 of the Central Excise Rules, 2002.

2. The principal controversy in the present matter is whether, in the given circumstances where the petitioner had not deposited the excise duty prior to the export of goods, the petitioner would be entitled to rebate under Rule 18 of the Central Excise Rules, 2002, on the goods exported by it.

3. The brief facts of the case are as follows:-

3.1 The petitioner is, *inter alia*, engaged in the manufacture of automotive parts. The petitioner claims CENVAT credit for the duty paid on the inputs under the provisions of the CENVAT Credit Rules, 2004. The petitioner cleared certain goods for export in the months of April to August, 2009. At the material time of exporting the goods, the excise duty on the said goods had not been paid. The duty on the said goods was deposited in December 2009 alongwith interest as applicable.

3.2 The petitioner filed an application on 16.02.2010 seeking a rebate of Central Excise Duty for a sum of ₹4,54,161/- under Rule 18 of the Central Excise Rules, 2002. The Assistant Commissioner (the Adjudicating Authority) issued a show cause notice dated 10.05.2010 calling upon the petitioner to show cause why the claim for rebate as made by the petitioner not be rejected, as admittedly the duty on the goods exported by the petitioner was paid after the goods were exported.

3.3 The Adjudicating Authority, subsequently, by an order dated 06.09.2010 rejected the claim made by the petitioner, on the ground that the conditions for claiming rebate under Rule 18 of the Rules had not been complied with. The Commissioner (Appeals) upheld the order of the Adjudicating Authority and this led to the petitioner to impugn the said order before the Central Government. The Central Government upheld the

order of the Commissioner (Appeals) and rejected the appeal by the impugned order.

4. It is not disputed that the petitioner has paid the excise duty on the automotive parts that were exported, *albeit* after the goods were so exported. The learned counsel for the petitioner has relied upon Rule 8 of the Central Excise Rule which provides for the manner of paying duty. He specifically referred to sub-rule 3 which provides for payment of interest in the event an assessee fails to pay the duty by the due date. The petitioner's case that the excise duty had been paid in the manner as prescribed. And, since there was some delay in payment of duty, the petitioner had also paid interest on the same. It is, therefore, contended that the petitioner should not be deprived of the benefit of rebate on duty under Rule 18, which is available where duty paid goods are exported. Rule 18 of the Central Excise Rules, 2002 is relevant and is quoted below:-

“RULE 18. Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation. - “Export” includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.”

5. It is apparent from the plain reading of the above quoted rule that the rebate of duty that is contemplated is not unconditional and subject to such conditions or limitations as may be prescribed. The learned counsel for the

Revenue has drawn the attention of this Court to Notification No. 19/2004-Central Excise (N.T.) and specifically referred to clause (a) of “Conditions and Limitations” as specified in the said notification. The same is reproduced below for ready reference:-

“(2) Conditions and Limitations

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;”

6. A bare reading of the aforesaid notification makes it amply clear that that one of the conditions for grant of rebate under Rule 18 of Central Excise Rules is that the excisable goods be exported after payment of duty.

7. In this case, it is admitted that the said condition has not been complied with. The respondent considered the same and held as under:-

“10. Government further observes that sub rule 3 and 3(A) of Rule 8 provides for payment of duty along with applicable interest if the assessee failed to pay the amount of duty by due date. Government notes that provision for claim of rebate is governed by Rule 18, which requires payment of duty at the time of export. The provisions contained in Rule 8 does not absolve the assessee from substantial conditions of payment of duty of claim rebate of duty under Rule 18 of Central Excise Rules 2002. Since, the fundamental condition of exporting duty paid goods is not satisfied in this case, so the rebate claim is rightly held inadmissible. Further, the facts of the case laws relied upon by the applicant is different from facts of this case and hence, the ratio of those case laws cannot be made applicable to this case.”

8. The learned counsel for the petitioner has argued that it would be highly inequitable, if the rebate is denied to the petitioner since,

undisputedly, the Excise duty alongwith interest has been paid. We are unable to accept this contention. The mandatory conditions for availing of the rebate cannot be waived on any equitable consideration.

9. In *Novopan India Ltd. v. Collector of Central Excise and Customs:* (1994) Supp 3 SCC 606, the Supreme Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of the Supreme Court in *Hansraj Gordhandas v. H.H. Dave:* (1969) 2 SCR 253, held that:-

“It is well-established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here.”

10. We also concur with the view that discharging the liability to pay Excise Duty in the manner as provided under Rule 8 of the Central Excise Rules cannot be construed as compliance of the conditions for availing rebate under Rule 18 of the said Rules. Sub rule (3) of Rule 8 of the Central Excise Rules only provides for payment of interest if Excise Duty is not deposited within the specified time, however, payment of interest on delayed payment after the goods have been cleared cannot be construed to mean that the condition of payment of duty prior to the export of goods has

been complied.

11. For the above reasons, this Court finds no infirmity with the impugned order. The writ petition is accordingly dismissed with no order as to costs.

VIBHU BAKHRU, J

S. RAVINDRA BHAT, J

MAY 15, 2014
RK

