IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6672 OF 2014

The Commissioner of Customs, Pune. ...Petitioner.
vs.
M/s. Cummins India Ltd. ...Respondent.

Mr. A.S.Rao with Mr. N.V. Kalantri for the Petitioner.
Mr. V. Sridharan, Senior Counsel with Mr. Prakash Shah for the Respondent.

CORAM : S.C. DHARMADHIKARI
AND
S.P. DESHMUKH, JJ.
DATE : 09 MARCH, 2015

PC:

The revenue has filed this writ petition under Article 226 of the Constitution of India by challenging the order passed by the revisional authority dated 8 July 2013 by which the revision application of the petitioner/applicant was dismissed.

2) The revisional authority confirmed the findings recorded in the order of the appellate authority dated 12 July 2012.

3) Mr. Rao appearing in support of the petition submits that the department rightly initiated the proceedings for recovery of excess draw back duties of Customs paid under Rule 16 of the Draw Back Rules by issuance of the notice of demand dated 9 May 2011. That was to recover an amount of Rs.22,12,56,455/- being amount of draw back claimed and received by the petitioner fraudulently. The petitioner's rightly faulted the respondent assessee for making declaration and stating in the proforma in the application at Sr. No.9 and 10, factually wrong and incorrect particulars. They seem to suggest that the claims were under Rule 6(1)(a) and that the All Industry rates of drawback for the products under heading 8408 are not fixed/notified. Once these rates were notified then application under Rule 6(1) Clause (a) were not in order. Therefore, the demand was rightly confirmed by the adjudicating authority in the order in original. In that regard, he invites our attention to the findings in the order in original and particularly Paras 62 to 65 of the order in original. He also submits that IC Engines exported by Cummins India Ltd. during the said period were manufactured availing all facilities under duty exemption scheme. Exports of IC Engines so manufactured using duty free imported inputs under the advance

licence were not eligible to draw back in terms of the conditions imposed under the brand rate letters. Mr. Rao, would therefore, submit that the order in original should have not been confirmed and the appellate and the revisional authority have seriously erred in law in confirming the same.

4) We have perused the writ petition and all the annexures thereto, including the order in original. The appellate authority was of the view that show cause notice alleged that the assessee have mis-declared and suppressed the material facts. They seem to suggest that there was no rate fixed of draw back on All Industry rate basis of IC Engines. However, the appellate authority concluded that the goods exported are IC Engines. The application for fixation of brand rate of draw back falling under Rule 6 pertains to IC Engines only. There is no mis-declaration of value or misdeclaration of the value either in the shipping bill or in the application for fixation of draw back. The finding of fact is that department had no information at particular time relating to duty saved under input output ratio etc. The only allegation is that in the application filed under Rule 6 the respondent assessee made a statement or declaration that there is no All Industry rate of draw back fixed or existing. In the order, the appellate authority

held that this much is not enough to allege misrepresentation and suppression of material facts. Material facts are noted by the appellate authority and which were to the full knowledge of the revenue. Merely making one statement in the application filed under rule 6 and particularly against one item will not mean that draw back amount was erroneously granted and no amount should therefore, be demanded.

5) It is this finding of fact which is confirmed by the revisional authority and the revisional authority had referred to all materials including the rules and found that the benefit of draw back scheme cannot be denied merely for the reason that application was filed under Rule 6 and not under Rule 7. That was because of the clarification from the Government itself and which is referred to in Para 9.4 of the order passed by the revisional authority. The clarification is aimed at not depriving the exporter of the substantial benefit of reimbursement of duties suffered on inputs used in the manufacture of export products. Thus, the findings of the Commissioner (Appeals) were held to be justified because the respondent assessee did not make any mis-declaration or suppressed the material facts. The findings of the Commissioner (Appeals) have also been confirmed in the light of

the policies and which aim at encouraging exports. In the circumstances, the order of the revisional authority cannot be termed as perverse or vitiated by any error of law, apparent on the face of the record. There is no material irregularity and which could be termed as resulting in manifest injustice. In view of this conclusion, the writ petition has no merits and it is dismissed. No costs.

6) At the request of Mr. Prakash Shah two weeks time is given to file Vakalatnama on behalf of the Respondent.

(S.P. DESHMUKH, J.) (S.C. DHARMADHIKARI, J.)