IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.15095 of 2001
Date of decision: 27.01.2015

M/s Proxima Steel Forge Private Limited ... Petitioner

versus

Union of India through the Secretary Commerce, New Delhi, and others.
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Rahul Sharma, Advocate,
for the petitioner.

None for the respondents.
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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. *(Oral)*

1. The petitioner challenges the proceedings of the Director General of Foreign Trade (for short, 'DGFT') denying to the petitioner the Duty Entitlement Pass Book (for short, 'DEPB') credit extended by the government for export of "non-alloy steel forging- (machined)". The impugned order was passed referring to a public notice issued on 21.09.1998 that specifically allowed for DEPB rate at 14% for export of non-alloy steel forged (machined) hammers upto 10 kilograms. The impugned order states that the notification

would be applied only prospectively and cannot be availed for the petitioner who is claiming the benefit for its exports between May 1998 to July 1998.

2. The learned counsel for the petitioner would argue that the DEPB scheme which had been issued set out several products with respective rates to be applied for grant of benefit. The petitioner's exported product fell within Entry 71 in the notification already issued by the Government of India, Ministry of Commerce, dated 13.06.1997. The petitioner would refer to the fact that the petitioner's export for the earlier period between 01.04.1998 to 01.05.1998, the benefit was to the tune of ₹3,01,853/- and if such a benefit had been granted previously, the same ought to be available for the subsequent export for the period May 1998 to July 1998 as well. When this plea was made by the petitioner, the respondent raised a query of whether the DEPB credit would be extended also to complete articles having achieved the characteristics of finished products and which did not require any other manufacturing process or it would cover only articles made by forging machined but not having achieved the characteristics of finished products. The Assistant Commissioner through his letter dated 23.07.1998 urged the petitioner to seek for a clarification from DGFT in that regard.

3. The petitioner has made such a representation on 13.03.2000 and also has appended the details of shipping bills and

setting out the FOB value through the various invoices raised and corresponding DEPB amount for each one of the invoices and aggregating the DEPB amount to be ₹7,61,423/-. While so doing, the petitioner also made reference to a notice that had been issued subsequently on 21.09.1998 by the DGFT allowing for a DEPB rate at 14% for non-alloy forged (machined) hammer upto 10 kilograms. The attempt was to show that a finished product was specifically spelt out in the subsequent notice which must be taken as clarificatory for exports already effected. The impugned order has been passed in response to the representation stating that the public notice issued on 21.09.1998 would be only prospective in nature and cannot be availed to an exporter for the previous period.

4. I find the whole reasoning to be erroneous. The issue was not the application of the order on 21.09.1998 to the exports. The petitioner's case was rested on two distinct pleadings: (i) the petitioner had already availed of DEPB rates for the export upto April 1998 for the very same product as falling within the Entry 71. If the petitioner had been granted a benefit for the earlier period, there was no reason for denying the same for the subsequent period; (ii) the item specification was merely non-alloy steel forging machined and there was no restriction of the benefit being available only to non-finished products. The petitioner was only referring to the subsequent notice which was clear in its expression also for the

rate to be applied for a hammer upto 10 kilograms which was a non-alloy steel forged material. If only the petitioner was claiming DEPB rate at 14%, then the impugned order could have been sustained to point out that the rate would be applicable only prospectively for exports made after 21.09.1998. The petitioner was only asking for rates as prevalent for the earlier period and the amount claimed at ₹ 7,61,423/- was on the rates that were prevalent at the relevant time. The doubt created that such a benefit would be applicable only to non-finished products was quite unnecessary for the Entry 71 does not say any more than the description of the product as in the manner indicated above. The denial of benefit was erroneous and the impugned order cannot be supported. The impugned order is quashed and the petitioner is entitled to the amount claimed, namely, ₹7,61,423/- with simple interest at 9% per annum from the date of claim till the date of payment. The petitioner shall also be entitled to the cost which I quantify at ₹10,000/-.

5. The writ petition is allowed on the above terms.

(K.KANNAN)
JUDGE

27.01.2015
sanjeev