IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8901-2015
Date of decision:- 06.05.2015

M/s Metro Tyres Ltd.

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Atul Gupta, Advocate,
Mr. Amar Partap Singh, Advocate,
Mr. Bhargav Mansatta, Advocate,
Mr. Amrinder Singh, Advocate,
for the petitioner.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner has challenged an order dated 12.01.2015 passed by the respondent No. 5 – Commissioner (Appeals) against the order in original passed by the Additional Commissioner of Customs imposing duty under Section 28 of the Customs Act, 1962.

2. We see no reason to interfere with the order in this writ petition as the petitioner has an alternate remedy of filing a second appeal before the Tribunal.

3. It is admitted that under the notification dated 11.09.2009 issued under Section 25 of the Customs Act, 1962, no exemption has been granted in respect of the safeguard duty under Section 8C of the Customs Tariff Act, 1975. Admittedly, pursuant to this notification, duty was imposed under Section 8C of the Customs Tariff Act, 1975. The petitioner contends that it is entitled to exemption from duty even under the Customs Act in view of the Foreign Trade Policy issued under Section 5 of the Foreign Trade Development & Regulation Act, 1992. Under para 4.1.4 of the Policy, advance authorizations are exempted from the payment of basic customs duty, additional customs duty etc. It is, however, also provided that imports for supplies covered under paragraph 8.2(h)(i) will not be exempted from payment of applicable anti-dumping and safeguard duty, if any. This issue

can be decided by the appellate authority. We, therefore, see no reason to entertain the writ petition.

4. The petitioner has also sought an order directing the respondents to modify the notification issued under Section 25 of the Customs Act, 1962 to grant an exemption also from the safeguard duty levied under Section 8C of the Customs Tariff Act, 1975. It was contended that this relief cannot be granted by the authorities in the event of the petitioner not succeeding before the authorities in the second appeal. The show cause notice was issued on 24.05.2013. In the event of the petitioner succeeding before the second appellate authority in respect of the contention that in view of the Foreign Trade Policy it would be entitled to exemption even from the safeguard duty under Section 8C, it would not be necessary to go into the other questions raised by the petitioner.

5. In these circumstances, the writ petition is disposed of by leaving the petitioner to avail the alternate remedy of the second appeal. It is, however, clarified that in the event of the petitioner not succeeding in the second appeal, it would be open to it to raise the other contentions by way of a separate writ petition. In the event of the second appellate authority having the power to condone the delay, this is a fit case where the delay ought to be condoned. However, in the event of the second appeal not being heard on merits, the petitioner would be at liberty to have this writ petition revived.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

06.05.2015
Amodh