

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 6th January, 2016.**

+ **W.P.(C) 79/2016**

M/S BIMLA INDUSTRIES **Petitioner**

Through: Mr. Abhas Mishra, Adv.

Versus

**COMMISSIONER OF CENTRAL EXCISE
& ANR**

..... **Respondents**

Through: Ms. Sonia Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.420/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. The petition seeks mandamus to the respondents Commissioner of Central Excise and Deputy Commissioner (Technical) of Central Excise to, within a period of one month fix the brand rate of drawback and dispose of the applications dated 25th November, 1999, 28th July, 2000 and 1st November, 2001 filed by the petitioner. Additional mandamus is also sought to the respondents to release the amount of drawback so calculated.
4. It is the case in the petition:

- (i) that M/s Bimla Industries of which Mr. Ashok Kumar Kansal was the sole proprietor exported stainless steel cutlery and utensils between August, 1989 and September, 2001 and made applications for fixation of brand rate on duty drawback, for Rs.1,22,660/-, Rs.35,085/- & Rs.1,04,864/- under the Customs and Central Excise Duties Drawback Rules, 1995 and the prevalent Export Import Policy;
- (ii) that the Drawback Cell of Central Board of Excise and Customs, New Delhi vide letter dated 15th July, 2008 recommended that those exporters who had filed the brand rate applications against exports made prior to 6th July, 2001 and whose writ petitions were pending before the High Court should be extended the benefit of the Circular No.68/97-Cus. or 39/99-Cus;
- (iii) (that even though the petitioner had not filed any writ petition and no writ petition of the petitioner was pending at that time but it appears that in terms of the aforesaid recommendation) the applications aforesaid of M/s. Bimla Industries were also considered and rejected vide order dated 19th October, 2010;

- (iv) that the said M/s Bimla Industries was merged with M/s Maa Kalyani Kitchenwares Ltd. with effect from 1st July, 2004 and accordingly the said M/s Maa Kalyani Kitchenwares Ltd. preferred an appeal before the Commissioner of Central Excise (Appeals) against the order dated 19th October, 2010 supra;
- (v) that the Commissioner of Central Excise (Appeals) vide order dated 25th November, 2011 *inter alia* directed as under:

“7. In view of the above, I set aside the impugned order and direct the adjudicating authority to re-examine the applications filed by M/s Bimla Industries for fixation of Brand Rate of Drawback in the light of the verification reports of jurisdictional Central Excise officers available on record and in terms of provisions of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The appeal filed by M/s Maa Kalyani Kitchenware Ltd. also does not have any merit in view of discussions above and accordingly the appeal filed by the appellant M/s Maa Kalyani Kitchenware Ltd. is rejected as far as their right to claim drawback accrued to M/s Bimla Industries is concerned.”

- (vi) that the department preferred first an appeal and thereafter a revision petition against order aforesaid but which were dismissed by Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and by the Joint Secretary, Ministry of Finance (Department of Revenue) on 22nd June, 2012 and 18th December, 2013 respectively;

This petition has been filed with the grievance that notwithstanding the direction aforesaid dated 25th November, 2011 of the Commissioner of Central Excise (Appeals), the applications of M/s Bimla Industries for fixation of brand rate have not been decided.

5. This petition has been filed by M/s Bimla Industries through its proprietor Mr. Ashok Kumar Kansal.

6. It has been enquired from the counsel for the petitioner that once it is the averment in the petition itself that M/s Bimla Industries has as far back as on 1st July, 2004 merged with M/s Maa Kalyani Kitchenwares Ltd. and thereby ceased to exist, how has this petition been filed in the name of M/s Bimla Industries and how can Mr. Ashok Kumar Kansal today purport to act as proprietor thereof.

7. The only reply of the counsel for the petitioner is that since the Commissioner of Central Excise (Appeals) vide order dated 25th November, 2011 had directed for the application of M/s Bimla Industries to be considered and decided, M/s Bimla Industries would be entitled to enforce the said order. He further states that it was only for the purpose of Customs and Excise Laws that the appeal of M/s Maa Kalyani Kitchenwares Ltd. in which M/s Bimla Industries had merged was dismissed.

8. Today, we are concerned with the question whether there is before this Court, any petition filed by a person in existence and through a properly authorized person.

9. The answer to that question has to be in the negative. Neither does M/s Bimla Industries exist as on date on which the petition was filed nor can Mr. Ashok Kumar Kansal represent himself to be the proprietor thereof and sue in the name of M/s Bimla Industries.

10. The counsel for the petitioner of course contends that since M/s Maa Kalyani Kitchenwares Ltd. has been held to be not entitled to pursue the claim of M/s Bimla Industries, Mr. Ashok Kumar Kansal, on remand is entitled to do so.

11. However, it is not the case of the petitioner that at the time of merger any such rights were vested in or remained in Mr. Ashok Kumar Kansal. From the averment of merger, it has to be assumed that Mr. Ashok Kumar Kansal settled all his claims as proprietor of M/s Bimla Industries with M/s Maa Kalyani Kitchenwares Ltd. and thus Mr. Ashok Kumar Kansal today is not entitled to receive any claims even if outstanding in the name of M/s Bimla Industries and the claim therefor would be of M/s Maa Kalyani Kitchenwares Ltd. only. The petitioner did not challenge and has in this

petition also not challenged the order dated 25th November, 2011 by which the claim of M/s Maa Kalyani Kitchenwares Ltd. was denied.

12. There is another aspect of the matter. As aforesaid, the claim pertains to more than 15 years back i.e. August, 1989 to September, 2001. The petitioner did not pursue the same. Though as per the recommendation dated 15th July, 2008 supra only the claims of those were to be considered who had filed writ petitions and which writ petitions were pending and M/s Bimla Industries was admittedly not covered thereby but the applications of M/s Bimla Industries appear to have been erroneously revived. The said erroneous revival was contrary to the policy decision / recommendation dated 15th July, 2008 and would not vest any right in the petitioner.

13. Not only so, the petitioner after 25th November, 2011 also has allowed the claim to become stale. Though letters are stated to have been written but it is a settled principle of law that merely writing letters does not extend the period of limitation. (See *Major (Retd.) Inder Singh Rekhi Vs. DDA* (1988) 2 SCC 338) Though no limitation is provided for preferring the writ petition but again it is the settled principle that due regard has to be had to the provisions of the Limitation Act, 1963 in this regard.

14. I am therefore of the opinion that no ground for entertaining the petition is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 06, 2016
'gsr'