IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8072 of 2007

M/s.L.T.Karle & Co.,
Unit-I, No.151, Indus Suburb,
Yeshwanthapuram, Bangalore. ... Petitioner

Vs.

1. The Commissioner of Customs,
No.33, Rajaji Salai, Custom House,
Chennai-600 001.

2. The Assistant Commissioner of Customs (EDI-DBK),
No.33, Rajaji Salai, Custom House,
Chennai-600 001.

3. The Joint Secretary, Govt. of India,
Ministry of Finance, Department of Revenue,
14, Hudco Vishala Bldg., B Wing, 6th Floor,
Bhikaji Camka Place, New Delhi-110 066. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the case in impugned Order No.210/2005, dated 25.07.2005, passed by the 3rd respondent herein and to quash the same and consequently direct the 2nd respondent to sanction the balance Drawback amount of Rs.6,20,209/- with appropriate interest from the date of claim till the date of sanction.

For Petitioner : Mr.P.S.Anand for Mr.T.Ramesh

For Respondents : Mr.S.Rajasekar, SPC

O R D E R

Heard Mr.P.S.Anand, representing counsel for Mr.T.Ramesh, learned counsel for the petitioner and Mr.S.Rajasekar, learned Senior Panel Counsel for the respondent Department.

2.The petitioner has filed this writ petition challenging the order passed by the third respondent dated 25.07.2005, confirming the orders passed by respondents 1 and 2, dated 31.08.2004 and 16.04.2004. The petitioner is an exporter of readymade garments to various foreign Countries under varied shipping bills and filed drawback claim for the entire drawback amount that could be available against the shipping bills being a sum of Rs.10,63,216/-. This claim was filed before the second respondent, who is the competent authority to verify and sanction the claim. Out of the total amount of drawback claim, the second respondent sanctioned only a sum of Rs.4,43,007/-. The reason for not sanctioning the remaining amount was on the ground that the petitioner has not produced the copy of certificate that they have not availed CENVAT credit. It is not disputed that the petitioner produced the relevant certificates for the non-sanctioned sum of drawback viz., Rs.6,20,209/- on 27.04.2004. When this application was taken up by the second respondent, he found that the application was barred by limitation in terms of Rule 15 of the Customs and Central Excise Duties Drawback Rules, 1995. Therefore, the second respondent rejected the petitioner's application by treating it as a supplementary claim and being barred by limitation under Rule 15 of the said Rules. On appeal, this order was confirmed by the first respondent and further confirmed by the third respondent on revision.

3.The short issue, which falls for consideration is whether the petitioner's claim was a supplementary claim or was it part of the original claim, which was not sanctioned. It is not disputed by the respondent that the original claim made by the petitioner was Rs.10,63,216/-, out of which, the Customs portion of the drawback of Rs.4,43,007/- was sanctioned. The non-sanction of the remaining amount was on account of the fact that the petitioner had not produced the certificate to the effect that they have not availed any CENVAT Credit. This certificate was produced by the petitioner on 27.04.2004. What is important to note is that the balance amount of drawback was not considered nor the claim made in that regard was rejected, but only a portion of the claim made was sanctioned. Thus, for all practical purposes, it should be taken that the petitioner's original application for a total sum of Rs.10,63,216/- was partially sanctioned and the remaining portion was not rejected, as no separate orders of rejection were passed by the original authority viz., the second respondent. Even assuming that the petitioner had filed the application on 27.04.2004 with requisite certificates stating that no CENVAT credit was claimed by them, the said application cannot be treated as a supplementary application, as it is not a claim over and above their original claim.

4.Thus, the form of the application is of little relevance, because the substance of the application is of importance. This is more so because this is an incentive given to exporters and the interpretation of the drawback scheme should lean in favour of the exporter especially in cases of those like that of the petitioner, who had fulfilled the export obligation. It is not known as to why the relevant certificate to show that the petitioner has not availed CENVAT credit could not be produced in time. The second respondent does not attribute any negligence on the part of the petitioner in this regard. Thus, for all the practical purposes, the petitioner’s application dated 27.04.2004 should be taken up for consideration and processed and not rejected on hyper-technical ground, especially when the original claim did not reject the balance claim of drawback. Thus, the interpretation given by the respondents in this regard is incorrect.

5.Learned Senior Panel Counsel appearing for the respondents submitted that the statutory rule prescribes outer time limit for making supplementary claim and the authority viz., the second respondent, has no jurisdiction to extend this statutory period of limitation. As I have held that the petitioner's claim is not a supplementary claim this issue does not arise for consideration on the facts of this case.

6.For the above reasons, this writ petition is allowed and the second respondent is directed to take into consideration the application filed by the petitioner dated 27.04.2004, verify the relevant certificates and if the same fulfils the necessary parameters, the second respondent is directed to sanction the remaining drawback. The above direction should be complied with within a period of three weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

abr

To

1. The Commissioner of Customs,
   No.33, Rajaji Salai, Custom House,
   Chennai-600 001.

2. The Assistant Commissioner of Customs (EDI-DBK),
   No.33, Rajaji Salai, Custom House,
   Chennai-600 001.

3. The Joint Secretary, Govt. of India,
   Ministry of Finance, Department of Revenue,
   14, Hudco Vishala Bldg., B Wing, 6th Floor,
   Bhikaji Camka Place, New Delhi-110 066.

+1 CC to Mr.S. Rajasekar, Advocate sr 68089.

+1 CC to Mr.T. Ramesh, Advocate sr 68144.

W.P.No.8072 of 2007

SP(24/10/2017)