

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-13859 of 2016

DATE OF DECISION:27.01.2017

M/S MALWA INDUSTRIES LTD. LUDHIANA ... Petitioner

V/S

UNION OF INDIA AND ORS. ... Respondents

**CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Tajender Joshi, Advocate
for the respondents.

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

The petitioner has challenged the order passed by the adjudicating authority i.e. the Deputy Commissioner of Customs, rejecting its claim for refund in respect of three bills of entry.

The petitioner claims to have succeeded on merits. The litigation culminated with the order and judgment of the Supreme Court dated 12.02.2009. On merits, the petitioner has succeeded and it is therefore, entitled to the refund. The respondents, however, claim that the application for refund is barred by limitation. Refund has been granted by the Department in respect of five bills of entries but not in respect of three.

According to the petitioner, the payments were made under protest and that therefore the bar of limitation has not apply.

The notice regarding the hearing of the application was issued on 12.04.2016 and received by the petitioner on 23.04.2016. The notice fixed the hearing on 18.04.2016 or 21.04.2016 or 25.04.2016 at 3:00 p.m. As we noted earlier, the notice was received only on 23.04.2016.

In the above facts and circumstances, the ends of justice require that the petitioner has an opportunity of meeting the case on merits. The petitioner has already paid the entire duty and seeks a refund thereof. On merits, the petitioner has succeeded right up to the Supreme Court. The only issue is one of limitation. The petitioner seeks to rely upon the records lying with the Department itself in this regard. The impugned order was passed on 12.06.2016.

In the circumstances, the impugned order is quashed and set aside. The Deputy Commissioner, Customs is directed to pass a fresh order after granting the petitioner an opportunity of being heard. The petitioner shall appear before the Deputy Commissioner, Customs in the first instance on 11:00 a.m. on 09.02.2017 and thereafter as directed by him. The petition is accordingly disposed off.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

27.01.2017
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Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No