IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10359 of 2007

Greaves Cotton Ltd.
Represented by its Group General Manager,
Shri R.Ganesh,
Heavy Engineering Unit,
D-18, Sipcot Industrial Complex,
Gummidipoondi - 601 201. ..Petitioner

vs

1.Union of India,
Rep. by its Secretary,
Ministry of Finance,
14, Hudco Vishala Building, B Wing,
6^{th} Floor, Bhikali Cama Place,
New Delhi - 110 066.

2.Commissioner of Customs (Appeals)
Cusoms House, 33,
Rajaji Salai, Chennai - 600 001.

3.Deputy Commissioner of Customs (Sea), Drawback,
Chennai Sea Export Commissionerate,
Custom House, 33,
Rajaji Salai, Chennai - 600 001. ..Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a writ in the nature of Certiorarified mandamus to call for the records pertaining to the order, of the 1^{st} respondent passed order No.618/2006 dated 31.10.2006 any quash the order and direct the first respondent to condone the delay caused in filing the drawback claim and dispose of the drawback application as per the provisions of law.

For Petitioner : Mr.Hari Radha Krishnan

For Respondents : Mr.T.Pramod Kumar Chopra
Senior Standing Counsel

O R D E R

Heard Hari Radha Krishnan, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopra, learned Senior Standing Counsel appearing on behalf of the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent dated 31.10.2006 rejecting the petitioner's revision application filed challenging the order in appeal dated 16.02.2006 passed by the Commissioner of Customs (Appeals). The petitioner had re-exported one Hydraulic Motor to Germany under Shipping Bill dated 18.03.2004 under Section 74 of the Customs Act, 1962 (The Act).

3. The goods were originally imported by Bill of Entry dated 11.02.2003 and the reason for re-export is on the ground that the buyer who wanted the motor refused to purchase the same. The let export order was issued on 06.05.2004. The petitioner filed a drawback claim in terms of Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. However, the said application was rejected by an order in original dated 06.07.2005 on the ground that it has not been filed within the prescribed time limit or allowable period of further period of three months.

4. Challenging the said order in original dated 06.07.2005, the petitioner preferred an appeal before the Commissioner of Customs (Appeals) by its order dated 16.02.2006 held that there is no provision in the statute to condone the delay and therefore, there is no infirmity in the order passed by the original authority, accordingly dismissed the appeal. Challenging the same, the petitioner filed a revision before the first respondent under Section 129DD of the Act. The revisional authority also confirmed the orders passed by the Appellate and Original Authority and therefore, the petitioner is before this Court, challenging the order passed by the first respondent.

5. It is an admitted fact that the petitioner did not file the drawback claim within a period of three months as provided under Rule 5(1) of the said Rules nor the claim was filed within the period of further three months as provided in the proviso to Rule 5. Therefore, the original authority as well as the appellate authority could not have been blamed for having rejected the petitioner's application as being time barred. But, however, before the revisional authority, the petitioner made an alternate submission stating that the Shipping Bill has been filed under Section 74, is deemed to be a claim made by the petitioner and filing the claim petition in the prescribed form

is a matter of procedure and the lapse of which is condonable, especially when the law is beneficial piece of legislation like Cenvat, Drawback, Rebate etc., and in recognition of which Rule 7A has been incorporated. Therefore, the petitioner prayed before the first respondent that in terms of Rule 7A, relaxation of Rule 5 may be allowed and the benefit of drawback may be extended. However, the first respondent while deciding the matter did not consider the alternate submission made by the petitioner but confined himself only to the point of delay.

6. Rule 7A of the said Rules deals with power to relax, in exercise of the powers under the said rules, if the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the conditions and has thus been entitled to drawback, it may be considered. The representation made on behalf of the exporter or agent shall be considered and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods. Therefore, the first respondent would be well within his Jurisdiction to examine the plea raised by the petitioner as to whether the reason for non compliance of the procedure under Rule 5(1) was for reasons beyond the control of the petitioner. However, this exercise has not been done by the respondent. A somewhat identical case arose for consideration before the High Court of Karnataka in the case of Acer India Pvt. Ltd., vs. Union of India reported in 2015 (325) E.L.T. 519 (Kar.). In the said case also, the claim for duty, drawback under Section 74 of the Act was rejected as it was filed beyond the prescribed period.

7. The Court, after taking into consideration, the decision in the case of Union of India vs. Wipro Ltd., reported in 2010 (255)E.L.T. 226 (Kar.) which was later affirmed by the Hon'ble Supreme Court in SLP (Civil) No.17492/2007 held that the authorities while examining the application for relaxation or for condonation of delay has to be more pragmatic or in other words if it is found that claim is not a false claim or in other words, it is genuine claim, they would be liberal in condoning delay. However, if authorities were to find that claim itself is doubtful, they would be within their domain to reject the application while considering the claim for relaxation of time or for condonation of delay as is permissible under Rule 7A if the Rules, 1995. While examining the sufficiency of cause shown by the exporter or his authorized agent, liberal approach ought to be adopted and technicalities even if any should yield to substantial justice.

8. Reliance was also placed on the decision of the Division

Bench of the High Court of Kolkata in the case of Comissioner of Customs, Mumbai v. Terai Overseas Ltd., reported in 2003 (156) E.L.T. 841 (Cal.) wherein it was held that the drawback rules being an incentive oriented scheme for augmenting export and claim for drawback cannot be withheld on the basis of mere technicality. Therefore, at the time of granting the Drawback Claim, the authorities have to proceed on reasonable basis and cannot accept a narrow and pedantic approach. Ultimately, in the case of Acer India Pvt. Ltd., (supra), the Court set aside the order of rejection of the claim and remitted the matter to the Central Government with a direction to consider the application filed by the petitioner and to pass orders thereon keeping in mind the observations made in the order and Rule 7A as well as the amendment which has been effected to Rule 5 of the Rules, 1995.

9. The learned counsel for the petitioner submitted that the first respondent in certain other cases has exercised discretion and power under Rule 7A and even permitted the conversion of Shipping Bill and to that of drawback. In this regard, the learned counsel placed reliance in the order passed by the Government of India in the case of Scan Gerographical As reported in 2011 (273) E.L.T. 452 (G.O.I.)

10. The learned Senior Standing Counsel for the respondents on the other hand would contend that the time limit prescribed being sacrosanct, the first respondent would not be in a position to relax the said condition and in the instant case, the delay is more than one year and the petitioner's explanation appears to be not reasonable and there is no error in the impugned order.

11. As pointed out earlier, the first respondent did not adjudicate upon the alternate plea raised by the petitioner wherein they made a prayer before the first respondent to relax the provision of Rule 5 by exercising the power under Rule 7A. Therefore, to that extent, the matter requires reconsideration and re-examination by the first respondent. Taking a clue from the observations made by the High Court of Karnataka in Acer India Pvt. Ltd., (supra) also bearing in mind that the drawback claim should not be defeated, on the ground of technicalities, appropriate relief should be granted to the petitioner.

12. In the result, the Writ Petition is allowed and the order passed by the first respondent is set aside and the matter is remanded to the first respondent for fresh consideration to decide as to whether the petitioner would be entitled for relaxation of the rigor of Rule 5(1) of the Rules and consider as to whether the petitioner's case would fall under Rule 7A of the Rules for the purpose of relaxation of the condition imposed

in Rule 5 [one of the Rules] and take decision on merits and in accordance with law as expeditiously as possible. No costs.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Union of India,
   Ministry of Finance,
   14, Hudco Vishala Building, B Wing,
   6th Floor, Bhikali Cama Place,
   New Delhi – 110 066.

2. Commissioner of Customs (Appeals)
   Cusoms House, 33, Rajaji Salai, Chennai – 600 001.

3. Deputy Commissioner of Customs (Sea), Drawback,
   Chennai Sea Export Commissionerate,
   Custom House, 33, Rajaji Salai, Chennai – 600 001.

+1cc to Mr.T.Pramod Kumar, Advocate SR.No.1025
+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.885

W.P.No.10359 of 2007

SSI(CO)
GN(25/01/2018)