IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21437 of 2003
and W.M.P.No.26614 of 2003

M/s.Madura Coats Limited,
Rep. by its Vice President-Excise & Legal,
at New Jail Road, Madurai-625 001. ... Petitioner

Vs.

1.The Union of India,
Rep. by the Secretary,
Ministry of Finance,
(Department of Revenue),
North Block, New Delhi.

2.The Joint Secretary,
(Revision Applications)
Ministry of Finance,
(Department of Revenue),
4th Floor, Jeevan Deep Building,
Sansad Marg (Parliament Street),
New Delhi-110 001.

3.The Commissioner of Customs
(Appeals) Custom House,
Madras-1.

4.The Deputy Commissioner of
Customs (Drawback),
Custom House, Madras-1. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records leading to the order of the second respondent in Order No.97/2003 dated 21.03.2003, quash the same and consequently, direct the respondent to sanction and pay to the petitioner a sum of Rs.7,45,347.43 as draw back amount together with interest @ 12% per annum from 01.06.1983 till date of payment.

For Petitioner : Mr.T.Mohan
for Mr.M.Murali

For Respondents: Mr.Syed Nurullah Sheriff,
Senior Panel Counsel

O R D E R

The petitioner is a company registered under the Companies Act, 1956 and in this writ petition, they seek for issuance of writ of certiorarified mandamus, to quash the order passed by the second respondent, the Revisional Authority in exercise of its powers under Section 129 DD of the Customs Act, 1962 and to direct the respondents to pay a sum of Rs.7,45,347.43 paisa as drawback amount together with interest at the rate of 12% per annum from 01.06.1983 till the date of payment. The facts leading to the filing of this writ petition could be briefly set out as hereunder.

2. The petitioner effected exports of cotton sewing thread during the year 1973 and filed drawback claims and sought that they may be kept pending till the Government of India fixed specific drawback rates for their export. On 08.04.1975, the Central Government issued notification fixing the drawback rates for the item exported by the petitioner. After issuance of the said notification, the petitioner filed an application dated 20.06.1975, under the Customs Act for payment of the drawback claims by reviewing the earlier order. However, the same was rejected by order dated 20.06.1975. Once again, the petitioner filed a fresh claim before the Assistant Collector of Customs on 23.04.1976, for review of the earlier order and payment of the drawback claims. A reminder was sent on 25.06.1976. Since no action was taken on the reminder, the petitioner filed Writ Petition Nos.2446 of 1978 and etc., batch. In the said batch, W.P.No.2446 of 1978 was for issuance of a writ of certiorari, to quash the order passed by the Collector of Customs in Order No.140/75-DBK as being illegal. In the other writ petitions, the petitioner sought for issuance of writ of mandamus, to direct respondents 2 and 3 therein to pay specified amount being claimed as drawback due to the petitioner on account of exports of sewing threads, which were made by the petitioner. In each of the writ petitions, the petitioner had given details about the quantity exported and the vessel, which carried export products. In an annexure to the writ petitions, the details of the shipping bills, date, quantity in Kgs., rate and amount due were furnished in a tabulated form. In the said writ petitions, counter affidavits were filed by the respondents, wherein except for two writ petitions, in all other writ petitions the respondents have admitted the averments made by the petitioner with regard to factum of export and the vessel in which the export was done. The writ petitions were disposed of by common order dated 30.09.1982. The operative portion of the order reads as follows:

"In the absence of any prohibition in the rules made under the Customs and Central Excise Duties Drawback Rules, 1971 prohibiting the petitioner in claiming the draw back on the strength of the aboesaid letter, in my view, there is no need to apply for relaxation of any of the provisions of the rules under Rule 15 of the said Rules. Failure to make the application before exporting such goods, in my view, will not in any way disentitle the petitioner to have the claim for the draw back on the strength of the letter dated 08.04.1975. Correctly, the petitioner has applied to the Assistant Collector of Customs, Madras, for getting the draw back amount as per Annexure A, which gives particulars as regards the claim made in respect of each of the writ petitions. It is incumbent upon the respondents to act as per the letter dated 08.04.1975. A statutory right has been conferred upon the petitioner as per the said letter to claim the draw back amount. Correctly such draw back amount has been claimed by the petitioner in all these writ petitions and as such, the respondents must after satisfying themselves as regards the quantum claimed towards the draw back amount in the schedule attached to the writ petitions, pay the draw back dues to the petitioner as expeditiously as possible. In as such as the petitioner's claim for the draw back due subject to the authorities verifying the correctness of the amount involved in it and the same coming within the period claiming which the concession is permitted is valid as per law, the respondents are directed to pay back the draw back amount to the petitioner in each of the writ petitions without any further delay. The rule nisi is made absolute in all the writ petitions except WP.Nos.2446 and 3070 of 1978. WP.No.3070 of 1978 is dismissed as superfluous.

As regards WP.No.2446 of 1978, which is for issue of a writ of certiorari, I do not think any rate order is needed since the claim made by the petitioner has been answered in favour of the petitioner in the writ petitions. Hence, WP.No.2446 of 1978 is also dismissed as superfluous. There will be no order as to costs in all these writ petitions." (emphasis supplied)

3. In the above order, Writ Petition No.3070 of 1978 was dismissed on the ground it is superfluous, because another writ petition for the same relief was filed in W.P.No.3067 of 1978. The reason for closing the other writ petition viz., W.P.No.2446 of 1978 is on account of the orders passed in the other writ petitions. Thus, net result was, the respondent was directed to satisfy themselves as regards the quantum claimed towards the drawback amount in the schedule attached to the writ petitions and pay drawback dues to the writ petitioners as expeditiously as possible. After the above direction was issued, the petitioner has been addressing the respondent by letters dated 04.01.1983 and 24.07.1987, for which they received a reply dated 30.10.1987, stating that it is not possible for the Customs House to ascertain the quantum of drawback on verifying the correctness of amount involved and therefore, it is not possible to settle the remaining claim.

4. In so far as one of the writ petitions, viz., W.P.No.3030 of 1978 is concerned, the respondent filed counter disputing the shipment. However, the learned counsel for the petitioner has brought to the notice of this Court that though there was a denial in respect of the shipment covered in W.P.No.3030 of 1978, the drawback amount has been paid by the respondent as per the proceedings of the Deputy Collector of Customs (APPG), Madras dated 30.10.1987.

5. To be noted, in the same order, the claims made by the petitioner, that is, the claims, which were covered in eight writ petitions, were settled. The petitioner subsequently reiterated for payment of the balance amount and filed a writ petition in W.P.No.10387 of 1992. The said writ petition was disposed of by order dated 17.07.2000, taking note of the argument of the Department that the Department was not able to decide the other claims, as documents such as export invoices, packing lists are not available in the Customs Office in spite of thorough search. Therefore, the Court directed that the petitioner should be given opportunity for producing those documents and appropriate orders were directed to be passed. The operative portion of the direction reads as follows:

> "5.Under the above circumstances, the learned counsel has requested this Court to direct the respondents to pass appropriate orders basing on daily list, manifesting register, duty draw back register available with the department pertaining to the petitioner's claim.

6.The learned counsel for the respondents has also agreed that as the documents were not available after a thorough search, a direction may be issued to the respondents to pass appropriate orders basing on the documents, which are available.

7.Under the above circumstances, it is suffice to direct the respondents to pass appropriate orders with reference to the other claims as stated in the impugned order dated 30.01.1987 basing on the daily list, manifest register, duty draw back register, if available pertaining to the petitioner within a period of three months from the date of receipt of a copy of this order.

8.It is also made clear that if the respondent requires the copies of the registers of the petitioner for settling the draw back amount, the petitioner should be given an opportunity for producing the same and the respondents are directed to pass appropriate orders on the materials placed by the petitioner.

9.With the above observation, the writ petition is disposed of. Consequently, WMP.No.15005 of 1992 is closed. No costs."

6. Subsequently, there has been correspondence between the petitioner and the Department, and ultimately on 17.11.2000, a notice was issued to the petitioner once again requesting them to submit relevant documents that may be available with reference to the rest of the claims, for which the Court had issued direction to the respondent and an opportunity of personal hearing was granted. The petitioner sent a reply dated 22.12.2000, stating that the fact of submission of shipping bills at the time of clearance of the goods and subsequently at the time of submitting the claim for drawback as also the correctness of their claim for drawback had not been denied by the Department till date and the same stands fully admitted.

7. Further, the petitioner pointed out that they have been diligently contesting the issue in the year 1978 and that the Department cannot take a stand that the Shipping Bills, Daily Lists, Manifests, Drawback Registers are not traceable and hence their claim cannot be paid. In the said letter, the petitioner pointed out the following four points to support their stand and the Department cannot deny the same.

(i) The correctness of our claim has not been denied and stands fully admitted;

(ii) The matter was sub-judice even since 1978 until its final disposal in 2000. The Department was fully aware of the legal proceedings and was also represented and accepted the decisions of the Court;

(iii) There is no time limit prescribed under the drawback rules for settlement of claim for drawback;

(iv) Other records such as Daily Lists, Manifest, Drawback Register should still be available;

8. After the above communication, the petitioner has been sending reminder letters and ultimately the Deputy Commissioner by order dated 12.10.2001, rejected the claim. As against the order of the Deputy Commissioner, the petitioner filed appeal before the Commissioner (Appeals) and the appeal was rejected. Aggrieved by the same, the petitioner filed revision petition before the Central Government. The Revisional Authority, by the impugned order, dismissed the revision petition. Challenging the same, the petitioner is before this Court.

9. I have heard Mr.T.Mohan, representing Mr.M.Murali, learned counsel for the petitioner and Mr.Syed Nurullah Sheriff, learned Senior Panel Counsel for the respondents.

10. The factual averments, set out above, will clearly prove that the export made by the petitioner has not been denied. In fact, in the counter affidavit filed by the respondent in this writ petition, in paragraph 11, it has been candidly admitted that the question of export has never been disputed by the Department. In such a situation, it has to be seen as to whether the respondent was justified in rejecting the petitioner's claim for drawback. The reason for rejection both by the Original Authority as well as by the Revisional Authority is on the ground that necessary documents were not available with the Department. The Department admitted the fact that the documents are not traceable. When the petitioner was directed to produce the documents, they were also in the position because, at the time when the claims were made in the year 1978, all original documents were submitted. Therefore, the petitioner had produced such of those documents, which were available with them and most of which are found mentioned in writ petition and counter affidavit filed by the Department.

11. To be noted, the respondent, after the direction issued by this Court in the writ petitions, which were disposed of by order dated 30.09.1982, had settled part of the claims, which were made by the petitioner and covered in Writ Petition

Nos.3030, 3062, 3066, 3068, 3071, 3071, 3072 and 3093 of 1978. Thus, having taken such a stand, if the Department is to reject the remaining claims, the reasons for rejection should be on merits. However, the respondent has refused to sanction the remaining amount on the ground that no documents are available with them. Though in the earlier writ petitions, direction was issued directing the petitioner to produce whatever available documents with them, they have responded to the Department by producing whatever was available with them. Therefore, the Department cannot now take a stand that unless a full set of documents, which is virtually a duplicate set, is produced, the respondent Department will not act on the petitioner's claim. A situation has come, where both the parties do not have the full set of documents. However, the Department has not denied the exports and what is required to be verified is the quantum alone.

12. In the considered view of this Court, the best document, which could be referred to and relied on is the counter affidavit filed in the writ petitions, which were filed in the year 1978. This is so because, in each of the writ petitions, the respondent has filed separate counter affidavits. Totally, 31 writ petitions were filed by the writ petitioner of which in two writ petitions, relief was not granted because one was a duplication, as the same item was covered in another writ petition and the other being writ of certiorari. Therefore, those two writ petitions were closed. Thus, in respect of 29 writ petitions, the claim made by the petitioner has been admitted except one writ petition, viz., 3030 of 1978, in which the respondent though had disputed the shipment, ultimately in the order dated 30.10.1987, had settled the claim.

13. Thus, in my considered view, the respondents cannot deny the claims for the reasons set out in the impugned orders. In fact the petitioner's rights cannot be infringed for the fault committed by the Department. This Court has been hearing these writ petitions for a considerable length of time on different dates and the petitioner was directed to file the affidavits and counter affidavits in all writ petitions filed in the year 1978. Copies of those affidavits were furnished to the learned counsel for the Department giving them substantial time to verify the contents. There appears to be no dispute regarding the stand taken by the Department in the counter affidavits. As a consequence, it has to be taken that all claims made by the petitioner have been admitted. This peculiar situation calls for a peculiar remedy. Therefore, the respondents are bound to settle the claim made by the petitioner, more so when they have never disputed the exports effected by the petitioner and the only reason for denial of the

drawback claim is on the ground that the records are not traceable with the Department. This can hardly be a reason to reject the petitioner's claim. However, this Court adds a word of caution that merely because records are not available with the Department, the Department should not concede to the petitioner's claim. The Court has been careful while making the observation in the preceding paragraphs about the petitioner's entitlement because of the fact that the respondents themselves have admitted in the counter affidavits filed in the earlier writ petitions as well as in this writ petition admitting the exports made by the petitioner. Therefore, if there was any other material to either dispute the export or the quantity, the respondents would have done so at the first instance when the writ petitions were filed in the year 1978. To be noted that the respondent filed separate counter affidavits for all the 31 writ petitions. Therefore, if there was a mistake committed by the petitioner, the respondent would have pointed out in the counter, as they had done in one of the writ petitions. Hence the averment made in the counter affidavits filed by the respondent in the writ petitions filed during the year 1978 amounts to admission of the petitioner's liability and the respondent are estopped from taking a different stand as a result the petitioner is entitled for the drawback claim as claimed.

14. The next question would be as to whether interest is payable on the said amount and the period for which interest has to be paid. The learned counsel for the petitioner referred to the decision of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. v. Commissioner of Income Tax I, Pune and others reported in (2002) 2 SCC 508, wherein the Court directed that the assessee should be compensated with the payment of interest for the delay caused by the Department. The learned counsel also referred to the judgment of the Division Bench of this Court in the case of M/s.Vamadev Exports v. The Commissioner (Appeals) in Writ Appeal No.64 of 2016 dated 16.12.2016, which was rendered taking note of the decision in Sandvik Asia Ltd. (supra) and granted compensation, as it was a claim for interest on interest.

15. Admittedly, at the first instance, the petitioner had filed all original documents in the proper format while submitting the drawback claim. Therefore, the petitioner had complied with the obligation cast upon them under the relevant regulations. It is the Department, which has misplaced the papers and now reports that it is not traceable. Therefore, the fault lies on the Department in not keeping the file safe and at this distance of time, the Department cannot state that the petitioner should have produced adequate copies as and when the Department called for. The Department having accepted the

drawback claim along with original documents, was bound to protect the same till orders are passed and disposal of the documents should be done in accordance with the Rules, which cover destruction of records. Therefore, the petitioner is entitled for interest on the delay in effecting payment of the drawback claimed.

16. The next question would be as to what would be the rate of interest and from what date it is payable. The petitioner in the set of writ petitions filed in the year 1978, claimed interest at the rate of 12%. However, the same was not granted and order of remand was issued. Ultimately, the Deputy Commissioner rejected the petitioner's claim by order dated 12.10.2001, which was confirmed by the Commissioner (Appeals) by order dated 29.05.2002, and confirmed in revision by the Revisional Authority on 21.03.2003. Challenging the same, the petitioner filed this writ petition on 31.07.2003. Since the Court is convinced that the petitioner is entitled for the amount, interest of justice would be met if the respondent paid interest from the date of filing of this writ petition, i.e., 31.07.2003. With regard to rate of interest, this Court is of the view that there has been variable rate of interest fixed under Section 27 A of the Customs Act by several notifications and the notification, which came to be issued in September, 2003 could be very well adopted and the rate of the interest is fixed at 6%.

17. Thus, for the above reasons, this writ petition is allowed by directing the respondents to pay a sum of Rs.7,45,347.43 paisa together with simple interest at the rate of 6% from 31.07.2003 till date of payment. The amount shall be paid to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
The Union of India,
Ministry of Finance,
(Department of Revenue),
North Block, New Delhi.

2.The Joint Secretary,
(Revision Applications)
Ministry of Finance,
(Department of Revenue),
4th Floor, Jeevan Deep Building,
Sansad Marg (Parliament Street),
New Delhi-110 001.

3.The Commissioner of Customs
(Appeals) Custom House,
Madras-1.

4.The Deputy Commissioner of
Customs (Drawback),
Custom House, Madras-1.

+1cc to Mr.M.Murali, Advocate sr.no.30915

W.P.No.21437 of 2003

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