IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4247 OF 2017 (O&M)
Date of decision: 16.08.2018

M/s Concepts Global Impex through its partner Sh. Sanjeev Arora

.. Petitioner

vs.

Union of India and others .. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

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

Mr. R.K. Handa, Advocate
for the respondents.

Rajesh Bindal, J.

CM No. 10370 of 2018

Miscellaneous application is allowed and the accompanying replication alongwith Annexures P-6 to P-8 is taken on record.

CWP No. 4247 of 2017

The grievance of the petitioner in the present writ petition is that at the time of import of goods, the duty leviable thereon was paid, however, the Directorate of Revenue Intelligence, New Delhi (for short 'the DRI') pressurised the petitioner to pay another sum of ₹ 40,00,000/- while detaining the goods in transit.

The submission is that the amount was paid to avoid delay in clearance and demurrage charges payable to the port authorities. The petitioner under the pressure of the DRI officials paid a sum of ₹ 40,00,000/- without there being any show cause notice or the order. It has been further submitted that when the amount was taken from the petitioner without there being any show cause notice or order passed confirming that demand, the same was in violation of Article 265 of the Constitution of India.

Learned counsel for the petitioner referred to Division Bench judgments of this Court in ***Century Metal Recycling Pvt. Ltd. vs. Union of India 2009(234) E.L.T. 234 (P&H) and Century Knitters (India) Ltd. vs. Union of India 2013 (293) ELT 504*** where refund of the amount recovered in this fashion was ordered. Delhi High Court judgment in ***Digipro Import and Export Pvt. Ltd. vs. Union of India and others 2017-TIOL-1076-HC-DEL-CX*** was also referred to wherein the matter was referred to CVC to enquire into the matter regarding harassment to the importers by the officials of the DRI.

Learned counsel for the petitioner further submitted that even if demand is confirmed against the petitioner in terms of show cause notice dated 24.04.2017 issued to him, for filing appeal, the petitioner will have to deposit only 10% of the duty. Hence, recovery of money under coercion at this stage is without authority of law and the amount needs to be refunded.

On the other hand, counsel for the respondents submitted that the amount was paid by the petitioner voluntarily, finding that he had violated the law while importing the goods by paying the duty on transaction value instead of the maximum retail price. The duty was leviable at the higher rate.

He further submitted that though show cause notice had already been issued to the petitioner on 24.04.2017, however, the proceedings are still pending.

Heard learned counsel for the parties and perused the paper book.

The fact that a sum of ₹ 40,00,000/- had been taken from the petitioner without there being any show cause notice or the demand at that time, is not in dispute. The only issue sought to be raised by counsel for the respondents is that the amount was deposited by the petitioner voluntarily. That issue has already been gone into by this Court in ***Century Metal Recycling Pvt. Ltd*** and ***Century Knitters (India) Ltd.*** *cases* (supra) wherein finding that certain amount was recovered from the exporter without any show cause notice or demand, it was ordered to be refunded.

In ***Century Metal Recycling Pvt. Ltd (supra)*** it was held that unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. It was observed as under:-

> *"13. As far as the amount deposited by the petitioners is concerned, case of the petitioners is that the same was deposited under coercion. Case of the respondents was that the same was deposited voluntarily. Whatever be the position, unless there is assessment and demand, the amount deposited by the petitioners cannot be appropriated. No justification has been shown for retaining the amount deposited, except saying that since it was voluntarily deposited. In view of this admitted position, the petitioners are entitled to be returned the amount paid."*

In ***Century Knitters (India) Ltd.*** (supra) finding that certain amount was recovered by the revenue without any show cause notice or demand, while directing retaining of 20% of the amount, the balance amount of ₹ 8 crores was directed to be refunded. It was held that unless a demand is finalized and is existing which is liable to be discharged, the revenue cannot retain any amount unless there is a specific provision in the statute which authorizes such retention. Retention of any amount by the revenue in such a situation would be violative of Article 265 of the Constitution.

The relevant observations are as under:-

> *"11. After hearing learned counsel for the parties and perusing the record, we find that as on date no crystallized liability has been shown to be existing against the petitioners. Further, only a show cause notice has been issued whereunder a liability to the extent of Rs.50 lacs could be fastened. Insofar, as the matters which are under investigation, it has not been shown that any show cause notice in respect thereof has been issued by the respondent-department so far.*
>
> *12. It is trite law that unless a demand, which is finalized and is existing which is liable to be discharged, the revenue cannot retain any amount unless there exists specific provision in the statute for the retention of the amount.*
>
> *13. On a specific query put to the learned counsel for the revenue relating to any provision in the statute on the basis of which the revenue could provisionally retain the amount, learned counsel for the revenue candidly admitted that there is no such provision to retain the amount except to refer to Section 42 of the Customs Act, 1962. Further, on a query as to whether any order requiring the petitioners to refund the duty drawback as canvassed by the revenue had been passed, learned counsel for the revenue was unable to show that there existed any such order or authorization from any competent authority. It was only urged that it was a disputed question of fact as to whether the amount was deposited voluntarily or under coercion. Be that as it may, whatever be the situation, the revenue cannot retain any amount to which it legally not entitled to as the same would be violative of Article 265 of the Constitution of India."*

Another fact which deserves to be noticed is that show cause notice was issued to the petitioner on 24.04.2017 and more than one year has already been elapsed but no order has been passed. Even if demand is confirmed against the petitioner, for hearing of appeal upto the CESTAT, only 10% of the amount is to be deposited, whereas the proceedings in the present case have not been concluded yet.

Keeping in view the enunciation of law as noticed above, after retaining the amount of ₹ 6,00,000/-, balance amount deposited by the petitioner be refunded to him within a period of four weeks from the date of receipt of copy of the order.

The writ petition is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

16.08.2018 (HARINDER SINGH SIDHU)
dinesh JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No