

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2019

PRONOUNCED ON : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.19974 OF 2005

AND

WMP.NO.21763 OF 2005

M/s.T.T. Limited,
54/Old No.65, 50 Feet Road,
Lakshmi Nagar,
Tirupur-641 402. Petitioner

Vs.

1. Customs & Central Excise
Settlement Commission,
Additional Bench,
Narmada Block,
Custom House, 33, Rajaji Salai,
Chennai-600 001.
2. The Commissioner of Customs,
Tuticorin. Respondents

PRAYER :

Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certorari, calling for the records of the case relating to the impugned order of Admission-cum-Final order No.34/2005/Cus, dated 12.05.2005, passed by the first respondent herein and to quash that portion of the said order by which the first respondent has directed the petitioner to pay interest at the rate of 10% per annum.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.T.Pramod Kumar Chopda
Senior Panel counsel

O R D E R

Heard Mr.T.Ramesh, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Panel counsel appearing on behalf of the respondents.

2. The brief facts of the case are as follows:-

a) The petitioner herein, who is engaged in the manufacture of export of cotton knitted garments, periodically claimed drawback of duty paid on the goods forming part of the export goods of the duty paid on the final product itself. In connection with a claim of duty drawback of Rs.7,79,397/-, the petitioner had inadvertently taken the CENVAT credit on the goods lying on stock which were meant for export and as a result, there was an excess claim and grant of drawback to the extent of Rs.4,92,251/-. Realizing the mistake, the petitioner had deposited the entire excess amount of Rs.4,92,251/- on 18.10. 2004.

b) On 13.12.2004, a show cause notice was issued proposing to appropriate the aforesaid amount deposited under Section 75 of the Customs Act, along with a proposal to impose penalty under Section 114 (iii) and confiscation under Section 113 of the Customs Act. As against the show cause notice, the petitioner had filed an application under Section 127B of the Customs Act, 1962, before the first respondent. Since the petitioner had admitted the entire duty liability and paid the same even before the issuance of the show cause notice, he prayed for immunity from penalty, confiscation and waiver of interest. By the impugned order dated 12.05.2005, the first respondent had granted the petitioner immunity from penalty and confiscation but however, interest at the rate of 10% per annum was levied. As against the levy of interest, the Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner had deposited the entire excess amount on 18.10.2004, which is prior to the show cause notice dated 13.12.2004 and therefore as per the provisions of Section 75A (2) of the Customs Act, 1962, immunity from interest also ought to have been ordered in favour of the petitioner. The learned counsel further submitted that when the interest was not demanded in the show cause notice, the levy of interest in the impugned order itself is bad in law.

4. The learned Senior Standing counsel for the respondents submitted that interest liability is a mandatory requirement under the statute and that it can be asked later. By drawing attention of this Court to the averments in the show cause notice, the learned counsel submitted that the show cause notice has been issued without prejudice to any other action that may be taken under the Central Excise Act, 1944 or the Customs Act, 1962.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that when the petitioner realized that there was an excess claim and grant of drawback to the extent of Rs.4,92,251/-, he had deposited the same on 18.10.2004 and the show cause notice came to be issued subsequently on 13.12.2004. The averments in the show cause notice, though states that it has been issued without prejudice to any other action, has not made a claim with regard to the interest.

7. Section 75A (2) of the Customs Act, 1962, as it then stood, reads as follows:-

Section 75 A (2). Interest on drawback-
Where any drawback has been paid to the claimant erroneously, the claimant shall, within a period of [two months] from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under Section 28AA from the date after the expiry of the said period of [two months] till the date of recovery of such drawback.

As seen above, Section 75A(2) stipulates that if any erroneous drawback has been paid, the claimant shall repay the said amount within two months from the date of demand and shall also pay interest from the date after the expiry of the said two months till the date of recovery. Admittedly, such a deposit has been made by the petitioner even prior to the demand of drawback under the show cause notice. Section 75A(2) contemplates payment of interest from the date of demand of the erroneously paid drawback. Since the petitioner had repaid the drawback even prior to the demand, the respondents will not be empowered to claim any interest. On this ground, the claim for interest is liable to be quashed.

8. There is yet another ground on which the petitioner may be entitled to succeed. Before the impugned order was passed, there was no prior notice on the proposed levy of interest, but for a general reservation of rights to take any other action under the provisions of the Act.

9. The Supreme Court of India in the case of Union of India and others V. Madhumilan Syntex Private Limited reported in 1988 (35) E.L.T. 349 (SC) had held that a demand raised without notice or hearing, would be invalid. In Nirlon Limited V. Union of India reported in 2007 (209) E.L.T. 12 (Bombay), a Division Bench of the Bombay High Court had followed Madhumilan Syntex's

case (supra) and held that the demand of interest, without a prior show cause notice, would be in violation of the principles of natural justice. The relevant portion of the said order reads as follows:-

"6. The case of the petitioner is that it followed the method permitted by the Deputy Commissioner and it should not be made to suffer. In any case, the petitioner should be afforded a hearing and for that purpose, reliance is placed on the judgment of the Apex Court in Union of India and Ors. v. Madhumilan Syntex Pvt. Ltd. to the effect that the demand raised without notice or hearing would be invalid.

9. We have noted the submissions with respect to the merits of the demand and the defence of the petitioner. The fact however remains, that principles of natural justice require that the petitioner ought to be issued a Show Cause Notice as to why the interest amount should not be claimed from it and after affording a hearing that liability ought to be decided. That has not been done which is clearly contrary to the judgment of the Apex Court in Madhumilan Syntex (supra). That was particularly necessary in the fact of the present case where the petitioner has chosen to follow one of the options given by the Revenue and the demand for interest was being raised after a good number of years. As far as that aspect is concerned, in our view, the submissions of Mr. Patil deserve to be accepted. The petitioner was entitled to at-least show cause for which he had to be given an opportunity."

The aforesaid extract is self-explanatory. As such, the interest levied by the first respondent without the prior show cause notice for proposed interest is invalid. While that being so, the contention of the learned Standing counsel for the respondent that the right to make a subsequent claim has been reserved in the show cause notice, without a specific demand, would also be untenable.

10. For all the aforesaid reasons, this Court is of the view that the petitioner is entitled to succeed. Consequently, the impugned order dated 12.05.2005, passed by the first respondent herein, insofar as it relates to the portion of the order

imposing interest at the rate of 10% per annum, stands quashed.
The Writ Petition stands allowed. Connected Miscellaneous
Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP

To

1. Customs & Central Excise
Settlement Commission,
Additional Bench,
Narmada Block,
Custom House, 33, Rajaji Salai,
Chennai-600 001.

2. The Commissioner of Customs,
Tuticorin.

+1cc to Mr.T.Ramesh, Advocate, S.R.No.74174

+1cc to the Special Government Pleader, S.R.No.74944

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and
WMP.No.21763 of 2005

MP(CO)
CS/03/10/2019

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