IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WRIT PETITION NO.7382 OF 2014

M/s.Skyline Exports,
represented by its Proprietor
Shri.B.Jagan Mohan
12-B, Vasanth Nagar, FGB Industrial Estate,
Singanallur, Coimbatore - 641 005.

...Petitioner

Vs

1. Deputy Commissioner of Customs (EDI - Drawback),
Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2. Government of India,
Ministry of Finance,
Department of Revenue,
No.14, Hudco Vishala Bldg. B Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

... Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records pertaining to the impugned No.235/13-Cus dated 18.10.2013 passed by the 2nd respondent and quash the same insofar as it relates to the rejection of drawback claim of 12 shipping bills mentioned therein.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.A.P.Srinivas
Standing Counsel

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned standing counsel for the respondents.

2. The petitioner manufactures and exports cotton made-ups. During the period 1999-2001, 35 consignments of cotton made-ups

were exported to various countries. Drawback of central excise duty was claimed in terms of serial number 63.06 of the drawback schedule at the rate of 7% advalorem.

3. On 16.06.2000 there appears to have been a Public Notice bearing No.180/2000 drawing attention to Board Circular No.37/2000(CUS) dated 08.05.2000 announcing the observance of 'Drawback Arrears Clearance Month' and extending the clearance period upto 30.06.2000. The public notice stated that pending drawback claims that were unanswered would be scrutinised and the queries/defects therein shall be exhibited by 10.00 a.m. on the very next day when the notice was made public. All exporters were requested to respond to the queries within 10 days. It was stated that if no responses were received resolving the raised queries, the claims would be disposed on merits. Admittedly, the petitioner did not respond to the same.

4. On 28.10.2004, the petitioner made a representation to the Grievance Committee for sanctioning the drawback claim. On 05.11.2004, a letter was received from the Deputy Commissioner of Customs (EDI-Drawback)/R1 stating that the drawback claims had been reduced to zero and disposed. Between 13.12.2004 and 15.10.2005 the petitioner filed representations before the authorities at various levels within the Customs Department requesting sanction of the drawback claims. Since there was no action forthcoming, W.P.No.15015 of 2005 was filed seeking a mandamus to direct R1 to dispose the drawback claims. This Writ Petition was withdrawn on 06.10.2005 granting liberty to the petitioner to pursue the issue with the Chief Commissioner. On 22.12.2005, the Chief Commissioner of Customs rejected the claims, endorsing the view of the first respondent, by letter dated 05.11.2004. The petitioner was of the view that the order was a non-speaking order that was passed in violation of the principles of natural justice and thus filed W.P.No.3904 of 2006 seeking a mandamus directing R1 to pass a proper, speaking order, in accordance with law. This Writ Petition came to be dismissed on 29.07.2009 as not maintainable and hit by res judicata. A Writ Appeal filed against the aforesaid order was also dismissed on 03.12.2009.

5. On 02.03.2010, the petitioner filed supplementary claims for drawback. Admittedly, there is no authority in law in terms of which the said claims have been made. Not content with filing the aforesaid claims, W.P.No.16319 of 2011 was also filed seeking a mandamus directing R1 to dispose the supplementary claims. This Writ Petition was ordered on 19.08.2011 directing R1 to consider and pass orders on the supplementary claims on merits and in accordance with law. R1 passed an order thereafter on 28.11.2011 rejecting the supplementary drawback claims and this order travelled in appeal to the Commissioner of Customs (Appeals). The first appellate authority, vide order dated 29.11.2012, rejected the claims in respect of 12 shipping

bills and directed R1 to sanction the drawback with regard to the remaining 23 claims. The reasoning was that the supplementary claims had been time barred, since the claims, dated 02.03.2010 related to transactions of the period 1999-2001. Cross appeals came to be filed before the second respondent/Government of India, which came to be dismissed on 18.10.2013. It is only the petitioner/assessee who has chosen to challenge the order passed by the Government by way of the present Writ Petition.

6. In this case, it under the public notice dated 16.06.2000 that the Commissioner of Customs takes up all pending drawback claims for clearance. Whether the processing of drawback claims can be carried out under a Public Notice is itself moot, in the light of Rule 13 of the Customs, Central Excise Duties and Service Tax Draw Back (Amendment) Rules, 2006, (in short 'Rules') which, at sub-rule (3a) stipulates that if the claim for drawback was found to be incomplete in regard to any material particulars or without necessary accompanying documents, the claim shall be returned to the claimant with a defect/deficiency memo in the prescribed form for compliance by the assessee.

7. In the present case, the defect memo has been published and this, in my view, would not satisfy the specific requirement of Rule 13(3), which states that a defect memo should be served on the assessee/exporter calling for rectification of the defects. Admittedly, no defect memo has been issued to the petitioner pointing out to it the defects that ostensibly arise in its drawback claims. Had this Rule been complied with, the petitioner might well have rectified the defects, thus paving the way for a timely disposal of its drawback claims. The flaw has occasioned at the door of the Department by the violation of principles of natural justice, specifically Rule 13(3) of the Rules.

8. This aspect of the matter has been considered by a Division Bench of the Bombay High Court in Balaji Impex V. Union of India (2012 (279) ELT 485) where, in the context of a similar Public Notice, the Bench has said that 'merely because there was a special drive to clear a backlog of matters, that would afford no justification for the department not to comply with the fundamental principles of natural justice. Efficiency in the disposal of the quasi judicial proceedings is important but, that cannot be at the cost of overriding fundamental principles known to the law of the land'. Though these observations have been made in the context of a special initiative by the Customs Department for finalisation of provisional assessments of certain specified bills of entry, the observations are equally relevant in the present case, if not more so. This is for the reason that an assessee who has made a claim for drawback should be put to notice if there are defects in the claim. Not doing

so would frustrate the spirit, object and intention of the drawback scheme itself, which is a scheme that has been brought in as a benefit to exporters.

9. I am thus of the view that the rejection of representation dated 05.11.2004 on the ground that all drawback claims were brought to nil is flawed. I am conscious of the fact that this order has not been challenged before me. However, this is the order which is the foundation of all subsequent proceedings. In effect, it is this order that has been modified by the Commissioner of Customs (Appeals) on 29.11.2012 when, out of 35 transactions, he rejects claims in respect of 12 shipping bills relating to the period pre-30.06.2000 and allows claims in respect of 23 shipping bills relating to the period post 30.06.2000. The rejection is based solely on Public Notice dated 16.06.2000. As stated earlier, the petitioner should not be denied the benefit of drawback based merely on a Public Notice, particularly when the petitioner has satisfied all other requirements under the relevant Notification/Scheme, thus frustrating the object of the scheme itself.

10. Though Mr.Srinivas argues that there is no sanction in law for the petitioner to have filed supplementary claims on 02.03.2010 wherein the petitioner seeks benefits in respect of transactions relating to 1999-2001, after the elapse of two decades, the sequence of dates and events as set out above indicates clearly that the petitioner has not been sitting pretty, but has been agitating the matter from the word go, specifically raising the issue of violation of principles of natural justice right from inception.

11. In the light of the discussion as aforesaid, this Writ Petition is allowed. The claim of rebate in relation to the twelve transactions denied under the impugned order shall be sanctioned and paid over to the petitioner within a period of six (6) weeks from date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Customs (EDI - Drawback),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2. The Ministry of Finance,
Government of India,
Department of Revenue,
No.14, Hudco Vishala Bldg. B Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

+1cc to Mr.Hari Radhakrishnan, Advocate in sr.no.82370
+1cc to Mr.A.P.Srinivas, Advocate in sr.no.81867

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MP(CO)
CS/06/01/2020