BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.04.2022
CORAM
THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) Nos.12268 and 12269 of 2008

W.P.(MD)No.12268 of 2008:-

M/s.Lovely Offset Printers Private Ltd.,
Sivakasi,
Rep. by its Director,
K.Vijayakumar,
43, B.Velayutham Road,
Sivakasi. .. Petitioner

Versus

1.The Director (DBK),
Directorate of Draw Back
Ministry of Finance,
Department of Revenue,
Parliament Street,
New Delhi - 110 001.

2.The Assistant Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
NGO 'A' Colony, Tractor Road, Tirunelveli.

3.The Assistant Commissioner of Central Excise,
Sivakasi Division, Sivakasi.

4.The Assistant Commissioner of Customs,
Customs House, Tuticorin.

5.The Joint Commissioner of Central Excise,
Draw Back Section,
Office of the Commissioner of Central Excise,
Tractor Road, Tirunelveli.
6.The Commissioner of Customs,
Custom House, Tuticorin.

7.The Commissioner of Central Excise,
NGO 'A' Colony, Tirunelveli.

8.The Assistant Director General of Foreign Trade,
Government of India,
Ministry of Commerce,
Office of the Joint Director,
General of Foreign Trade,
K.K. Nagar, Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to pay interest at the rate of 9% per annum or at 10% as applicable to Section 11BB of the Central Excise Act 1994 in respect of settled amount of Draw Back of Rs.7,62,739/- [Rupees Seven Lakhs Sixty Two Thousand Seven Hundred and Thirty Nine only] for the period from 16.12.2000 to 29.08.2008, within a reasonable time.

For Petitioner : Mr.M.Kumar

For R1 and R8 : No Appearance

For R2 to R7 : Mrs.S.Ragaventhre
Junior Standing Counsel

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General of Foreign Trade,
K.K. Nagar, Madurai.

4.The Assistant Commissioner of Customs (Refunds),
Customs House, Tuticorin.

5.The Assistant Commissioner of Central Excise,
NGO 'A' Colony, Tirunelveli.

6.The Commissioner of Central Excise,
NGO 'A' Colony, Tirunelveli.

7.The Commissioner of Customs,
Custom House, Tuticorin. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent in C.No.VIII/20/175/2008 RF, dated 14.11.2008, quash the same and to direct the respondents to pay interest at the rate of 9% per annum or at 10% as applicable to Section 11BB of the Central Excise Act 1994 in respect of settled amount of Draw Back of Rs.3,76,058/- (Rupees Three Lakhs Seventy Six Thousand and Fifty Eight only) for the period from 10.01.2001 to 22.07.2008, within a reasonable time.

For Petitioner : Mr.M.Kumar

For R1 and R3 : No Appearance

For R2 & R4 to R7 : Mrs.S.Ragaventhre
Junior Standing Counsel

COMMON ORDER

In these Writ Petitions, the petitioner has challenged the impugned communications, dated 30.10.2008 and 14.11.2008 of the Assistant Commissioner of Central Excise, Tirunelveli, and the Assistant Commissioner of Customs (Refunds), Tuticorin, respondents 2 and 4 herein, respectively.

2.It is the specific case of the petitioner that they exported goods sometime in the year 2000 and filed two applications for fixation of brand rate duty drawback on 16.09.2000 and 03.11.2000 respectively. These applications were ultimately allowed only on 31.07.2008 and 04.07.2008 respectively and thereafter, the petitioner was paid the duty drawback under the provisions of the Customs and Central Excise Duties Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

3.The learned counsel for the petitioner submits that the inordinate delay in determining the brand rate of duty drawback for over a period of 8 years warrants payment of interest on such belated payment.

4.On the other hand, it is the contention of the learned Standing Counsel for the respondents that there is no delay on the part of the respondents in fixing the brand rate or duty drawback though the applications were filed on 16.09.2000 and 03.11.2000 respectively. It is submitted that the issue relating to fixation of brand rate duty drawback was kept in the call-book stage as the issue was pending before various High Courts and eventually settled by the Hon'ble Supreme Court in **Union of India and others vs. Arviva Industries India Limited and others** reported in **2014 (3) SCC 159.** It is pursuant to the above said decision of the Hon'ble Supreme Court, the applications for fixation of brand rate duty drawback were considered and appropriate orders were passed, pursuant to which, the amounts have also been paid to the petitioner.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

6.The provisions of the Customs and Central Excise Duties Drawback Rules, 1995, makes it clear that wherever an application is filed for fixation of brand rate duty drawback, such application should be disposed of within a period of 60 days. Rule 6 of the above said Rules reads as under:-

''6. Cases where amount or rate of drawback has not been determined.-

(1) (a) Where no amount or rate of drawback has been determined in respect of any goods, any manufacturer or exporter of such goods may, within sixty days from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule (5), apply in writing to the Central Government for the determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components:

Provided that the Central Government may, if it is satisfied that the manufacturer or exporter was prevented by sufficient cause from filing the application within the aforesaid time allow such manufacturer or exporter to file such application within a further a period of thirty days.

(b) On receipt of an application under clause (a) the Central Government shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

(2)(a) Where an exporter desires that he may be granted drawback provisionally, he may, while making an application under clause (a) of sub-rule (1) apply in writing to the Central Government that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the amount or rate of drawback under clause (b) of that sub-rule.

(b) The Central Government may after considering the application authorise by Commissioner of Customs at the Port where the goods are exported to pay provisionally an amount not exceeding the amount claimed by the exporter in respect of such export:

Provided that the Commissioner of Customs may, for the purpose of allowing provisional payment of drawback in respect of such export, require the exporter to enter into a general bond for such amount, and subject to such conditions, as the Commissioner of Customs may direct; or to enter into a bond for an amount not exceeding that full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself,-

(i) to refund the amount so allowed provisionally, if for any reason, the Central Government decided not to allow drawback; or

(ii) to refund the excess, if any, paid to him provisionally if the Central Government decided to allow a drawback:

Provided further that when the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, he shall repay to the Commissioner of Customs the excess or be entitled to the deficiency, as the case may be.

(c) The bond referred to in clause (b) may be with such surety or security as the Commissioner of Customs, may direct.

(3) Where the Central Government considers it necessary so to do, it may cancel authorisation referred to in sub-rule (2) from such date as it may specify.''

7.As the delay is not on account of the petitioner in failing to file any documents required for processing the duty drawback, there is no justification in the stand of the Department by stating that the amount has been immediately paid within a period of one month from the date of fixation of the duty drawback on 31.07.2008 and 04.07.2008 respectively. Though payments have been made, there is an enormous delay in sanctioning the duty drawback to the petitioner on the exports made during 2000 under various shipping bills. Under these circumstances, I am inclined to allow these Writ Petitions by quashing the impugned order/communication and directing the respondents to pay interest at 7.5% p.a. from the date of applications filed for fixation of brand rate on 16.09.2000 and 03.11.2000 respectively. The rate of interest at 7.5% p.a. has been fixed considering the fact that the rate of interest has varied during this period substantially. The respondents are directed to pay the quantified amount and pay the interest to the petitioner within a period of three months from the date of receipt of a copy of this order.

8.These Writ Petitions stand allowed in terms of the above observation. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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+1 CC to M/s.S.Ragaventhre, Advocate (SR.No.16944)

+2 CC to M/s.S.Renganathan, Advocate (SR.No.16540 & SR.No.16541)

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MGJ(21.04.2022) 6P 12C