

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

APO 25 of 2021
with
WPO 959 of 2013

IA No: GA 2 of 2018 (Old GA 293 of 2018)

Commissioner of Customs (Airport and Administration),
Kolkata & Ors.

Vs.

Kariwala Industries Limited & Ors.

For the appellants	:- Mr. Vipul Kundalia, Mr. Bhaskar Prosad Banerjee, Mr. A. Maity, Ms. Aditi Singhanian, Advs.
For the Union of India	:- Mr. Vipul Kundalia Mr. Siddhartha Lahiri, Advs.
For Respondent No.5, Reserve Bank of India	:- Mr. Alok Kumar Banerjee, Ms. Anuradha Sarkar, Advs.
For the Respondents	:- Ms. Anupa Banerjee, Ms. Rakhi Purnima Paul, Ms. Shalini Dey, Advs.
Judgment on	:- 25.07.2023.

I. P. Mukerji, J.:-

In this case it would be useful to describe the parties by their names. Kariwala Industries Ltd. (Kariwala) is the respondent writ petitioner. It has its registered office at JI-5, Block-EP, Sector –V, Salt Lake, Kolkata – 700091.

Parliament enacted the Special Economic Zone Act, 2005 and made the Special Economic Zone Rules, 2006 thereunder. One of such zones was the Falta Export Processing Zone which is now Falta Export Economic Zone (FEEZ). Kariwala asserts that they got permission to set up a unit

there. They called it Kariwala Green Bags Unit-III. They describe it as a division of the company. The Development Commissioner, Falta Special Economic Zone on 1st August, 2005 issued a Letter of Permission (LOP) under Rule 19(2) of the said Rules specifying the items of manufacture permitted to be made by this unit. From time to time this permission was extended till 30th June, 2017.

Chapter VI of the said Act conferred special benefit for manufacture in this zone for goods imported into or goods exported out of this zone. An entrepreneur in the Special Economic Zone would be entitled to refund of a part of the duty paid by them under the Customs Act, 1962, Central Excise Act, 1944, Central Excise Tariff Act, 1985 and Customs Tariff Act, 1975 on goods brought from the domestic tariff area (DTA) in the form of exemption, concessions, drawback of duty, if inter alia used as an input in the manufacture of goods by the entrepreneur in the said zone and exported out of the country.

The core of the dispute between the parties arose out of the letter dated 21st May, 2009 from the Inspector of Customs, Falta Special Economic Zone to Kariwala Green Bags that the organization had not made any exports during the financial year 2008-2009. Therefore, they were asked to explain their drawback claim on account of utilization of goods procured from DTA as per Rule 34 of Special Economic Zone Rules, 2006. On 17th November, 2009 Kariwala Green Bags replied that they were Unit-III of Kariwala Industries Ltd. Both the organizations were the same. It is true that in the shipping bills Kariwala had been mentioned as the consignor/exporter. Such stipulation did not make any difference in the status of Kariwala Green Bags as the manufacturer and exporter of the goods, they claimed. According to Kariwala, their Unit-III, Kariwala Green Bags procured raw materials from the company. These materials were sent to the unit after payment of excise duty. Unit no. III then manufactured finished goods from these raw materials and exported

them to countries like Turkey, France, U.S.A., Netherlands and Tokyo. On this basis Kariwala Green Bags claimed duty drawback in terms of the above rules.

However, the shipping bills were drawn in the name of Kariwala.

This drawback claim relates to the period April, 2008 to March, 2009. It amounted to Rs.52,67,429/-. According to the respondent writ petitioner, Kariwala Green Bags procured goods from the domestic tariff area. According to the authorities, Kariwala and Kariwala Green Bags were different entities. Foreign exchange was received on export of the goods by Kariwala and not Kariwala Green Bags. The appellants' point of view is that to get the benefit of drawback the exporter, importer and the recipient of the foreign exchange have to be one entity. Kariwala Green Bags and Kariwala operated through different LOPs.

Kariwala strongly denied these allegations and claimed that it had several units or divisions, one of which was Kariwala Green Bags. This unit was part and parcel of the same organization, Kariwala.

According to the appellants, these two entities are different. In the shipping bills, the exporter was shown as Kariwala Industries Ltd. with the LOP no. of Kariwala Green Bags. There was violation of Section 50(2) of the Customs Act, 1962 for mis-declaration, it was alleged. Procurement of raw materials by Kariwala Green Bags for exportation by Kariwala Industries Ltd. was violation of para 34 read with para 22(2) of Special Economic Zone Rules, 2006. Furthermore "payment has been made in foreign currency by converting INR from the current account of Kariwala Industries Ltd." The Assistant Commissioner, Customs, Falta Special Economic Zone, Falta by a decision dated 9th August, 2011 held that the transaction made by Kariwala Green Bags was not a valid one under Section 30(8) of the Special Economic Zone Rules, 2006 read with the Reserve Bank of India rules and regulations and Section 75 of the

Customs Act, 1962. Hence, the claim of drawback of M/s. Kariwala Green Bags was rejected.

An appeal from this order was preferred before the Commissioner of Customs (Appeals) who by his order dated 30th December, 2011 allowed the appeal by inter alia making the following observations and findings:-

“7. From the above, it is clear that the lower authority has misdirected himself in drawing conclusions. To state that M/s Kariwala Green Bags and M/s. Kariwala Industries Ltd. are different entities is a misplaced understanding of the facts. As stated earlier, M/s Kariwala Green Bags and M/s. Kariwala Industries Ltd. are different units of M/s. Kariwala Industries Ltd. The determination by the lower authority that the appellant has violated rules 22(2), 30(8) and 34 of the SEZ Rules, 2006, is factually incorrect. There seems to be no such violation. Thus this finding of the lower authority is set aside. Further, the reference to section 50(2) of Customs Act, 1962, is irrelevant and mis-conceived. Correspondingly there is no mis- declaration. Lastly, it is a fact on record that the export sale proceeds have been obtained for which bank realization certificate have been obtained and submitted. The State Bank Bikaner and Jaipur has clarified that the payment were made to the DTA unit after conversion of Indian rupees to foreign currency and then subsequent conversion of foreign currency to Indian rupees. Therefore, the findings on this score by the lower authority is not correct and is liable to be set aside. I, therefore, set aside the impugned order and direct that the admissible drawback may be sanctioned to the appellant.

8. The appeal is allowed with consequential relief to the appellant.”

From this order, the Commissioner of Customs (Airport and Admn.) preferred a revisional application under Section 129DD of the Customs Act, 1962. This was decided by a Joint Secretary to the Government of India. By his order dated 28th May, 2013, the order in appeal was set aside.

The matter did not end here. Kariwala preferred a writ application in this court against the Development Commissioner, Falta Economic Zone and other co-respondents challenging this order.

A learned single judge of this court deciding the writ application came to the finding that Kariwala Green Bags was part of the business of Kariwala and was not a separate company by the name of Kariwala Green Bags. The court pointed out the letter of permission dated 1st August, 2005 which mentioned Kariwala Green Bags as Unit-III of Kariwala. The letter of permission had been issued in the name of Kariwala Green Bags as a unit of the said company, Kariwala. The said division, Kariwala Green Bags belonging to Kariwala justified export of the goods by Kariwala Industries Ltd. in its own name. Transfer of goods from one unit of an entity to another for manufacture was permissible under Rule 30(15)(v) and proviso to Rule 34. The learned judge noted the requirement of Rule 30(8) of the said Rules that raw materials procured from the domestic tariff area had to be made from a foreign currency account. He also noted the contention of the customs authorities that payment had been made in foreign currency but not from a foreign currency account. Kariwala Green Bags admittedly did not maintain a foreign currency account but the export proceeds in Unit-III received in foreign currency were credited to a current account from which payment was made. In earlier years duty drawback had been granted on the basis of this transaction, the court held. Finally, his lordship came to the following finding:-

“It is clear from the records that there is no dispute with regard to the writ petitioner having procured duty paid raw materials from the Domestic Tariff Area into FSEZ or used such raw materials in the manufacture of goods within the zone. It is also the admitted fact that the finished goods were exported from the zone and export proceeds were realized in foreign currency. As such, the writ petitioner's claim for drawback ought to have been granted treating payment for goods procured from Domestic Tariff Area in foreign currency from the current account to which the foreign currency export proceeds to Unit-III were credited, considering the same to be substantial compliance of Rule 30(8) of the said Rules

In such circumstances as stated above, the writ petition is allowed upon setting aside the Revisional order dated 28th May, 2013 with a direction upon the concerned respondent authorities to allow the drawback claim of the writ petitioner - as applicable - preferably within a period of six weeks but not later than eight weeks from the date of communication of a photostat certified copy of this judgement and order.

Urgent photostat certified copy of this judgement and order, if applied for, be supplied to the parties on priority basis.”

The Commissioner of Customs (Airport and Admn.), Kolkata and Ors. are on appeal before us.

On each and every material issue the learned single judge has come to a plausible finding. He has held that Kariwala Green Bags was a division of Kariwala Industries Ltd. and not a separate entity. Being a division it was entitled to transfer goods to another division for manufacture. This transfer was made to Unit-III, Kariwala Industries Ltd. It was a requirement of the duty drawback scheme that the raw materials for manufacture had to be procured from a domestic tariff area and paid from a foreign currency account. Although not paid from a foreign currency account, Kariwala Green Bags paid for these goods in foreign currency through a dedicated account, according to the learned judge, substantially complying with the requirement of the rules as this foreign currency was derived from export of its products through the export zone.

The scope of interference of the writ court whether in its original or appellate jurisdiction with factual findings in a decision is extremely limited. It can interfere if the authority has failed to exercise its jurisdiction or has exceeded its jurisdiction. If there is violation of the principles of natural justice, the court can interfere. If there is an error of law apparent in the order, it vitiates it. The court will not re-examine facts or evidence. It cannot substitute its views with that of the court or

authority below. If the finding on facts is plausible, the court will not interfere.

If the findings on facts are so glaringly and grossly erroneous or so perverse, unreasonable and unconscionable that no prudent person could have arrived at them, the court can interfere. Short of this, the court has very little powers of probing into an impugned order.

Far from being erroneous or unreasonable the judgment under appeal is extremely well reasoned. On each and every point in issue, the learned judge has come to a plausible finding in support of the respondent's entitlement to its duty drawback claim. We see no reason to interfere with it.

The appeal is accordingly dismissed. The impugned judgment and order is affirmed.

The connected application (GA 2 of 2018) is disposed of accordingly.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(BISWAROOP CHOWDHURY, J.)

(I. P. MUKERJI, J.)