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W.P. No.18124 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.18124 of 2020

and

WMP Nos.22512 and 22513 of 2020

Texel Industries
Represented by its Proprietrix
Valli Palaniappan

... Petitioner

VS

1. The Assistant Commissioner of Customs (Drawback - AIR)
Office of Commissioner of Customs
(Air Port & Air Cargo),
New Customs House,
Meenambakkam,
Chennai - 600 027.

2. The Assistant Director,
Directorate of Revenue Intelligence,
25, Gopalakrishna (Iyer) Road,
T.Nagar,
Chennai - 600 017.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent comprised in Show Cause Notice F. No.VIII/26/284/2007-DRI dated 12.03.2009 and the consequential Order in Original



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No.529/2020-AIR, dated 25.09.2020 passed by the 1st respondent and quash the same as contrary to law, arbitrary, unconstitutional, illegal and violative of the principles of natural justice and consequently direct the respondents to refund the amount of Rs.3,99,306/- deposited by the petitioner vide Demand Draft No.231611, dated 06.08.2007 with the 2nd respondent.

For Petitioner : Mr.Subhang P. Nair
Varsha Balasubrapawan
for Mr.Prahalad K. Bhat

For Respondents : Mr.H.Siddarth,
Junior Standing Counsel
for Mr.A.P. Srinivas,
Senior Standing Counsel for R1
Mr.V.Sundareswaran,
Senior Panel Counsel for R2

ORDER

The only point that arises for consideration in this writ petition is whether the impugned Order-in-Original, dated 25.09.2020 passed under Rules 16A of the Customs and Central Excise Duty Drawback Rules, 1995 read with Section 75 and 75A(2) of the Customs Act, 1962 can be quashed by this Court on the ground that the show cause notice was issued to the petitioner in the year 2009 and a personal hearing was granted to them in the very same year but the impugned order came to be passed only in the year 2020 after a lapse of more than eleven years.



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2. Under the impugned Order-in-Original, the petitioner has been called upon to pay a sum of Rs.1,74,441/- in terms of Section 75(1) read with Rule 16A of the Customs and Central Excise Duty Drawback Rules, 1995 and another sum of Rs.63,563/- towards interest as per the provisions of Section 75A(2) of the Customs Act, 1962.

3. The contentions of the petitioner in this writ petition is that even though Section 75 of the Customs Act, 1962 does not prescribe a period of limitation for recovering the duty drawback amount, any recovery can be made only within a reasonable period.

4. The learned counsel for the petitioner drew the attention of this Court to a judgment of a learned Single Judge of this Court, dated 21.08.2020 in W.P. No.315 of 2020 in the case of ***J.Sheik Parith vs. The Commissioner of Customs and another*** involving an identical matter. By following a decision of the Hon'ble Supreme Court in ***Bhattinda District Co-operative Milk P. Union Ltd. vs State of Punjab & Others*** reported in ***217 ELT 325***, the learned Single Judge held that the statutory authority must exercise jurisdiction, within a reasonable period, even though the statute has not prescribed any period of limitation.

5. In the instant case, admittedly the show cause notice which culminated in the passing of the impugned Order-in-Original was issued



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on 12.03.2009, whereas the Order-in-Original was passed after a lapse of more than eleven years i.e., only on 25.09.2020. Pursuant to the show cause notice dated 12.03.2009, the petitioner has sent a reply on 09.09.2009 and a personal hearing was also afforded to the petitioner on 10.09.2009 itself. However, the Order-in-Original which is challenged in this writ petition was passed only on 25.09.2020 after a lapse of more than eleven years. The decisions relied upon by the learned counsel for the petitioner referred to supra squarely apply to the facts of the instant case.

6. The Hon'ble Supreme Court in the case of ***Bhattinda District Co-operative Milk P. Union Ltd.***, as referred to supra, though dealing with a case involving reopening of an assessment under the Punjab General Sales Tax Act, 1948 has held that though limitation is not prescribed under Section 21 of the said Act, the statutory authority must exercise jurisdiction, within a reasonable period. In fact, the learned Single Judge of this Court in ***J.Sheik Parith's*** case referred to supra has followed the decision of the Hon'ble Supreme Court while coming to the conclusion that the statutory authority must exercise jurisdiction, within a reasonable period, even though the statute has not prescribed any period



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of limitation. Having passed the Order-in-Original on 25.09.2020 even though the show cause notice was issued by the 2nd respondent as early as on 12.03.2009 which was also replied by the petitioner on 09.09.2009 and a personal hearing was afforded to the petitioner on 10.09.2009 itself, the 2nd respondent did not pass the final order immediately thereafter or within a reasonable time but has chosen to pass the impugned Order-in-Original only on 25.09.2020 after a lapse of more than eleven years.

7. On the ground that the respondents have not passed the Order-in-Original within a reasonable time, despite the fact that the show cause notice was issued as early as in the year 2009, this Court by following the decisions rendered by another learned Single Judge of this Court in *J.Sheik Parith's* case, referred to supra and by following the decision of the Hon'ble Supreme Court in the case of *Bhattinda District Co-operative Milk P. Union Ltd*, is of the considered view that the impugned Order-in-Original has to be quashed.

8. The learned counsel for the petitioner drew the attention of this Court to a Division Bench judgment of the Bombay High Court in the case of *ATA Freight Line (I) Pvt. Ltd., v. Union of India represented by*



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the Secretary and Others reported in **2022 SCC Online Bom 648** for the purpose of substantiating the claim of the petitioner for refund of the amount, which is mentioned in the impugned Order-in-Original as the petitioner had already paid the said amount in the year 2007 itself.

9. The petitioner claims that the said amount was paid under protest, though there is no documentary evidence produced by the petitioner before this Court to show that the same was paid under protest. Even assuming that the petitioner's statement that the said amount was paid under protest is to be accepted by this Court, even otherwise, the petitioner is not entitled for refund, as any refund claim will also be barred by limitation. When the petitioner has pleaded before this Court that on the ground of limitation the Order-in-Original ought not to have been passed, the same yardstick applies to the petitioner as well. The petitioner cannot blow hot and cold. Therefore, this Court makes it clear that the petitioner is also not entitled for refund of the amount, which they had already paid in the year 2007 itself, which is the subject matter of the Order-in-Original which is challenged in this writ petition. The Bombay High Court decision relied upon by the learned counsel for the petitioner did not deal with such a situation and therefore, it does not have any bearing to the facts of this case.



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10. For the foregoing reasons, the impugned show cause notice dated 12.03.2009 and the Order-in-Original, dated 25.09.2020 are hereby quashed and the writ petition is allowed. However, it is made clear that the petitioner is also not entitled to claim refund of money that they have already paid in the year 2007 itself, which is much prior to the date of show cause notice also on the ground that said claim is also barred by limitation .

11. The statement made by the learned Standing Counsel appearing for the 1st respondent that insofar as the subject transaction is concerned, there is no other claim by the respondents against the petitioner, is recorded.

12. No costs. Consequently, connected miscellaneous petitions are closed.

24.02.2023

Index:Yes/No

Neutral Citation:Yes/No

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ABDUL QUDDHOSE, J.

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To

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