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W.P.No.26406 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.26406 of 2021

Hijaz Kuroda Gloves Company Pvt. Ltd.
Rep. By Director Patel Mohamed Yousuf
No.17/7, Wuthucatan Street
Periamet, Chennai – 600 003. .. Petitioner

Vs.

1. The Principal Commissioner RA & Ex-Officio
Additional Secretary to the Government of India
Ministry of Finance, Department of Revenue
8th Floor, WTC, Cuffe Parade, Mumbai – 400 005.
2. The Commissioner of Customs
Chennai IV Commissionerate, Custom House
No.60, Rajaji Salai, Chennai – 600 001.
3. The Deputy Commissioner of Customs (DBK)
Office of the Commissioner of Customs
Chennai – IV Commissionerate
No.60, Rajaji Salai, Chennai – 600 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, calling for the records of Order No.230/2021-CUS(SZ)/ASRA/MUMBAI dated 24.09.2021 and quash the same.

For the Petitioner : Mr.R.Swarnavel

For the Respondents : Mr.S.Gurumoorthy
Senior Panel Counsel
for R2 and R3



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ORDER

The petitioner is before this Court against the impugned order dated 24.09.2021 bearing reference F.No.373/255/DBK/2020-RA/5481, filed under Section 129 DD of the Customs Act, 1962 [for brevity, hereinafter referred to as "the Act of 1962"].

2. The impugned order precedes a show-cause notice dated 18.03.2019 in respect of the exports made by the petitioner during the third quarter of 2017-18. The petitioner claimed the benefit of duty drawback under Section 75 of the Act of 1962 r/w Customs and Central Exercise Duties Drawback Rules, 2017 [in short, "the Rules of 2017"]. After the drawback was sanctioned to the petitioner based on the shipping bills filed by the petitioner under Section 50 of the Act of 1962, the goods were exported out of Country and thereafter, drawback was also sanctioned and paid to the petitioner. The show-cause notice, which has been issued to the petitioner, questioned the rate of duty drawback sanctioned to the petitioner on the ground that the bills of entries filed by the petitioner is not specific and therefore, the petitioner



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has wrongly availed higher rate of duty drawback by claiming classification in respect of the shipping bills under the heading "4203 05" instead of "4203 06".

3. The rate of duty drawback for the products classifiable under the aforesaid headings of the Rules of 2017 reads as under:

<i>Tariff Item</i>	<i>Description of Goods</i>	<i>Unit</i>	<i>Drawback rate</i>	<i>Drawback cap per unit in Rs.</i>
(1)	(2)	(3)	(4)	(5)
4203	Articles of apparel and clothing accessories, of leather or of composition leather			
420305	Gloves for use in industry including cut resistant gloves, heat resistant gloves, garden gloves, work gloves, welding gloves, water resistant gloves and driving gloves, made of leather with or without cotton / synthetic material	Pair	3.60%	6.1
420306	Other gloves made of leather		1.50%	



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4. The impugned order affirms the Order-in-Appeal SEAPORT C.Cus.II No.810/2020 dated 09.06.2020, bearing reference F.No.C48/II/461/R/2019-Sea, affirming the Order-in-Original No.68929/2019, dated 16.05.2019, bearing reference F.No.S.Misc.21/2019-DBK.

5. Learned counsel for the petitioner submits that the impugned order is erroneous and is liable to be interfered with. He would draw attention to the provisions of the Act of 1962 and the Rules of 2017.

6. Learned Senior Panel Counsel for the respondent, on the other hand, would submit that the petitioner has deliberately mislead the Department, resulting in payment of excess duty drawback by giving a generic declaration in the respective shipping bills, based on which the drawback was sanctioned.

7. I have considered the arguments advanced by learned counsel appearing for the petitioner and learned Senior Panel Counsel appearing for the respondent. I have also perused the provisions of the Act of 1962 and the Rules of 2017 and the



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show-cause notice dated 18.03.2019, which preceded the Order-in-Original No.68929/2019, dated 16.05.2019 and the order of the Commissioner of Customs (Appeals-II) dated 09.06.2020 in Order-in-Appeal SEAPORT C.Cus.II No.810/2020 dated 09.06.2020 and the impugned order passed by the respondent in exercise of power conferred under Section 129 DD of the Act of 1962.

8. The relevant provision for redetermining the classification declared / made in the shipping bills filed under Section 50 of the Act of 1962 can be done only under Section 17 of the Act of 1962. As per Section 17(1), *"an importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods"*. As per Sub-Section (2) to Section 17, the proper Officer enjoys wide power to verify the entries made both in the bills of entries filed under Section 46 of the Act of 1962 or shipping bills filed under Section 50 of the Act of 1962 and for this purpose, can examine or test any import goods or export goods or such part thereof, as may be necessary.



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9. In case, the Department wants to deviate from the declaration made in the shipping bills filed by the petitioner under Section 50 of the Act of 1962, the only option available to the Department was to invoke Sub-Sections (4) and (5) of Section 17 of the Act of 1962, which are reproduced below:-

Section 17(4) of the Act of 1962	Section 17(5) of the Act of 1962
(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.	(5) Where any re-assessment done under sub-section(4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.



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10. The law regarding the assessment of bill of entry / shipping bills was settled. Refund can be claimed or denied only if the assessment is countermanded in the manner known to law, is under the aforementioned provisions.

11. This view has been taken by the Hon'ble Supreme Court of India in the case of **Priya Blue Industries Ltd. vs. Commr. of Customs¹**, which view has now been affirmed by the Hon'ble Supreme Court in the case of **ITC Ltd. vs. Commissioner of Central Excise, Kolkata IV²**, where the Apex Court has observed as under:-

"44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or reassessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption,

1 (2005) 10 SCC 433

2 (2019) 17 SCC 46



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as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Reassessment is permitted only under Sections 17(3), (4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or reassessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India [Hero Cycles Ltd. v. Union of India, 2009 SCC OnLine Bom 801 : (2009) 240 ELT 490 (Bom)] though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. [Priya Blue Industries Ltd. v. Commr. of Customs, (2005) 10 SCC 433 : (2004) 172 ELT 145]”



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12. Thus, without altering the classification in the shipping bills filed under Section 50, the drawback sanctioned to the petitioner cannot be denied by invoking Section 28 of the Act of 1962. It has been held by the Hon'ble Supreme Court that when the law mandates a particular thing to be done in a particular manner, then it has to be done in that manner. Thus, being the settled position of law, there is no legal basis to sustain the impugned order. The writ petition, accordingly, stands allowed. There shall be no order as to costs. Consequently, W.M.P.No.27862 of 2021 is closed.

08.11.2024

Neutral Citation:Yes/No

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To:

1. The Principal Commissioner RA & Ex-Officio
Additional Secretary to the Government of India
Ministry of Finance, Department of Revenue
8th Floor, WTC, Cuffe Parade, Mumbai – 400 005.
2. The Commissioner of Customs
Chennai IV Commissionerate, Custom House
No.60, Rajaji Salai, Chennai – 600 001.



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3. The Deputy Commissioner of Customs (DBK)
Office of the Commissioner of Customs
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C. SARAIVANAN, J.

(drm)

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