
(2002) 08 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8672 of 2001

Bhagwati International

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 28

Citation : (2005) 190 ELT 300

Hon'ble Judges : Virender Singh, J; N.K. Sodhi, J

Bench : Division Bench

Advocate : Liyaqat Ali, for the Appellant; Rajesh Gumber, ACGSC, for the Respondent

Judgement

N.K. Sodhi, J.—Petitioner No. 1 is a hundred percent export oriented unit registered with the Ministry of Commerce, Government of India. It is claimed that the respondents under coercion got a sum of Rs. 50 lacs deposited from the petitioners even when there was no demand for any duty or tax outstanding against them. This amount was deposited more than three years back in the year 1999. The petitioners have filed this petition under Article 226 of the Constitution for a mandamus directing the respondents to refund the aforesaid amount with interest.

2. In response to the notice of motion, the respondents have filed their reply. It is pleaded that the Commissioner of Customs, New Delhi has issued a notice dated 19-1-2000 to the petitioners calling upon them to show cause why a sum of Rs. 3,84,43,296/- be not demanded and recovered from them u/s 28 of the Customs Act. It is admitted that final adjudication of this notice has yet to be made and there is no amount outstanding against the petitioners.

3. We have heard Counsel for the parties. The learned Counsel appearing for the Department strenuously contends that as and when the demand against the petitioners is finalised the amount of Rs. 50 lacs deposited by them in June, 1999

will be adjusted against that demand and, therefore, this Court should not direct the respondents to refund the aforesaid amount of Rs. 50 lacs to the petitioners. We are unable to agree with the learned Counsel. Since the adjudicating authority has not yet determined any amount as due which is payable by the petitioners, there is no justification for the Department to retain the sum of Rs. 50 lacs which was admittedly deposited by the petitioners way back in June, 1999. If and when any demand is created, it will be open to the Department to recover the same from the petitioners in accordance with law. We, therefore, allow the Writ Petition and direct the respondents to refund the sum of Rs. 50 lacs to the petitioners along with interest at the rate of 9% per annum from the date of deposit till the date of its return. The needful must be done within three months from the date of receipt of a copy of this order.