(2010) 09 BOM CK 0193

In the Bombay High Court

Case No : Writ Petition No. 1778 of 2007

Commr. of Cus. Drawback Recovery Cell APPELLANT

Vs

Phoenix Cement Ltd. RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Customs Act, 1962 — Section 129DD, 74, 75

Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 16(a)

Citation : (2011) 183 ECR 63 : (2010) 259 ELT 372

Hon'ble Judges : V.C. Daga, J;R.M. Savant, J

Bench : Division Bench

Advocate : R. Ashokan, for the Appellant; Prakash Shah, P.D.S., for the Respondent

Final Decision : Dismissed

Judgement

1. P.C.: Perused Petition.

2. Heard the Learned Counsel for the Petitioners and the Learned Counsel appearing for the Respondents.

3. This Petition filed under Article 226 of the Constitution of India is directed against the order dated 14th June 2006 passed by the Joint Secretary to the Government of India on the application filed u/s 129DD of the Customs Act, 1962, whereby and whereunder the order in original dated 15th April 2005 passed by the Assistant Commissioner of Customs directing the Respondents to refund the duty draw back in exercise of powers u/s 75 of the Customs Act, 1962, was set aside, with the observations reproduced herein below:

From the language used in Rule 2(a) of the Drawback Rules, it is clear that it relates to Section 75 ibid. In the instant case, the goods were imported and subsequently, re-exported u/s 74 ibid. As such, these goods are governed by the provisions and the rules framed u/s 74 ibid only.

Provisions of Section 75 of Customs Act and Customs and Central Excise Duties

Drawback Rules, 1995 framed thereunder are therefore independent and govern a separate scheme of drawback different in intendment, scope and applicability to the provisions of Section 74 and re-exported of imported goods (Drawback and Customs Duties) Customs and Central Excise Drawback Rules 1995 cannot be invoked to deny drawback u/s 74 for reasons of non-receipt or part-receipt of sale proceeds in view of absence of any such enabling stipulation u/s 74 itself or the rules framed thereunder.

In view of the above the impugned order in Appeal is set aside and the Revision Application consequently succeeds.

4. Mr Ashokan the learned Counsel appearing for the Petitioner tried to contend that the Revisional Authority namely Joint Secretary to the Government of India was not justified in setting aside the order holding that the provisions of Section 75 of the Customs Act or Rule 16(a) of the Customs and Excise Act could not have been invoked to deny draw back u/s 74 for want of receipt or part receipt of sale proceeds in view of the absence of any such enabling stipulation u/s 74 itself or rule framed thereunder. He thus submits that the impugned order is liable to be set aside.

5. Per contra Mr. Shah the Learned Counsel appearing for the Respondents urged that the submission made by Mr. Ashokan is not correct. The said submission is contrary to the scheme of the Customs Act. He submits that there is a distinction between Section 74 and Section 75 of the Customs Act. He submits that Section 74 of the Customs Act comes into operation when articles are imported, and thereafter re-exported, such articles being easily identifiable whereas Section 75 comes into operation when imported materials are used in the manufacture of goods which are exported. He placed reliance on the judgment of Delhi High Court in Abc India Ltd. Vs. Union of India, in support of his submission. He thus submits that the order of the Tribunal is in consonance with the law laid down by the Delhi High Court.

6. Having heard and examined the issue, we concur with the submissions made by Mr. Shah. We also concur with the view taken by the Delhi High Court in case of ABC India Ltd. (supra).

7. In the above view of the matter, the Petition is dismissed. Rule is discharged with no order as to costs.