(2006) 03 DEL CK 0132

In the Delhi High Court

Case No : W.P (C) No. 1284 of 2002

Hewlett Packard India Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:
Customs Act, 1962 — Section 18(2), 27(1), 27(2), 27A

Citation : (2006) 131 DLT 252 : (2006) 88 DRJ 238 : (2006) 201 ELT 3

Hon'ble Judges : Markandeya Katju, C.J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Devnath, for the Appellant; Kailash Gambhir and S. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Markandeya Katju, C.J.—This writ petition has been filed praying for a mandamus directing the respondents No. 2 & 3, the Commissioner of Customs, Aircargo, New Delhi Customs House, IGI Airport, New Delhi and the Deputy Commissioner of Customs to implement the order of the Commissioner of Customs (Appeals) New Delhi dated 6.8.2001 and for a mandamus directing the said respondents to finalise the assessment in respect of 28 Bills of Entry in question on the basis of the aforesaid order of the Commissioner of Customs (Appeals) and to sanction the refund of excess customs duty of Rs. 45,08,079/- in respect of the 28 excess Bills of Entry in question and further to direct the said respondents to grant interest on the aforesaid amount from March, 2000 till the date of the refund.

2. Heard counsel for the parties and perused the record.

3. The petitioner is engaged in the business of buying and selling various computer related items like computer printers, cartridges for printers etc. The petitioner has a factory at Bangalore which manufactures Computers.

4. It is alleged in paragraph 2 of the petition that right from 1992-93 the petitioner had been importing various consignments of printers and has been

selling the same in India. The inkjet printers imported by the petitioner have always been classified by the Customs Department for the purpose of customs duty under subheading 8471.60 as an output unit of Automatic Data Processing Machines. It is alleged that there is no dispute whatsoever regarding the classification of inkjet printers imported by the petitioner.

5. The petitioner has also been importing for the past more than 10 years, the inkjet cartridges required in the inkjet printers. The petitioner has classified these cartridges under the Heading 8473.30 of the Customs Tarrif Act, 1985 as parts of Automatic Data Processing Machines falling under Heading 84.71. The classification of these cartridges under subheading 8473.30 has also not been disputed by the department at any time. It is alleged that all the Bills of Entry filed by the petitioner right from 1992 in respect of these cartridges has been assessed finally accepting this classification without any dispute.

6. Since the cartridges imported by the petitioner were classifiable under subheading 8473.30 as parts of machines of 84.71 the petitioner filed Bills of Entry claiming concessional rate of duty at the rate of 5% under Sl. No. 230 of Notification No. 16/2000. However, in view of the existence of another Sl. No. 233 with respect to inkjet cartridges prescribing 25% rate of duty, the Customs Department insisted that the petitioner should pay the customs duty @ 25% and not @ 5%. Since the petitioner required the consignments on urgent basis, the petitioner sought provisional assessment of the goods imported and sought to pay the differential customs duty under protest, so as to clear the consignments. However, Along with each of the Bills of Entry the petitioner also filed letters stating that the excess customs duty which has been recovered from them is not being passed on to the buyers.

7. It may be mentioned that the Central Board of Excise & Customs vide letter dated 11.4.2000 directed all the Commissioner of Customs to assess the inkjet cartridges provisionally under subheading 8473.30 as parts of Automatic Data Processing Machines by taking a simple bond for differential duty, if any. It is alleged that despite the direction of the CBEC the customs department recovered the entire customs duty at @ 25% in cash from the petitioner and the petitioner paid it under protest.

8. Thereafter, the issue regarding the classification of inkjet cartridges was discussed in the Tarrif Conference of Commissioners and it was decided by all the Commissioners that the inkjet cartridges should be classified under subheading 8473.30 and should be subject to customs duty at the rate mentioned in Sl. No. 230 of Notification No. 16/2000-Cus.

9. Consequent to the above Tarrif Conference, the petitioner filed a refund claim with the Customs Department on 17.10.2000 in respect of the excess customs duty paid by them on the inkjet cartridges from 31.3.2000 to 30.4.2000.

10. The Deputy Commissioner of Customs by his order dated 16.2.2001 held that the inkjet cartridges imported by the petitioner are classifiable under subheading

8443.90 and hence @ 25% duty has to be paid. However, in appeal the Commissioner of Customs (Appeals) by his order dated 7.8.2001 held that the inkjet cartridges are classifiable under the subheading 8473.30 and hence duty has to be paid @ 5 % under Sl. No. 230 of Notification No. 16/2000. Hence, the Commissioner of Customs (Appeals) set aside the order of the Deputy Commissioner of Customs, New Delhi. The petitioner submits that this order has been accepted by the Customs Department in as much as no appeal has been filed by the Department against this order before the CEGAT, or any other Court or authority. Hence, the said order of the Commissioner of Customs (Appeals) dated 7.8.2001 has become final.

11. Consequent to the passing of the above order of the Commissioner of Customs (Appeals) the petitioner requested the Deputy Commissioner through various letters to finalise the assessment of the Bills of Entry and sanction the refund claim which is due to them. However, respondents have not even replied to the said letters nor have they implemented the order of the Commissioner (Appeals) dated 7.8.2001. Hence, this writ petition.

12. A counter affidavit has been filed by the respondents and we have perused the same. It has been stated therein that the principal amount of refund has already been received by the petitioner on 2.5.2002. However, the petitioner''s claim of interest on the said amount has been denied by the respondents.

13. In paragraph 9 of the counter affidavit, it is stated that after the order of the Commissioner (Appeals) dated 7.8.2001 the petitioner vide letter dated 30.8.2001 requested the Deputy Commissioner of Customs for an early finalisation of the provisional Bills of Entry and an early hearing on the refund application. The letter was marked to the Refund section and all the 26 Bills of Entry in original were received by the petitioner from the Refund section on 17.8.2001 for getting them finally assessed from (Group V A). The petitioner submitted these Bills of Entry for finalisation vide letter dated 21.8.2001. As the refund claim was still pending for want of finally assessed Bills of Entry, another deficiency in the memo dated 27.11.2001 was issued to the petition. The petitioner by his letter dated 27.11.2001 submitted Xerox copy of the Chartered Accountant''s certificate dated 21.6.2000 certifying that excess duty paid has been incorporated in the books of accounts (Customs Duty recoverable) and they also submitted the sales invoices.

14. It is alleged in paragraph 11 of the counter affidavit by the department that it was considering whether to file an appeal against an order of the Commissioner of Customs (Appeals) dated 7.8.2001 before CEGAT or not. Finally on 29.4.2002 it decided to accept the order of the Commissioner of Customs (Appeals) and not to file any appeal against it.

15. The Deputy Commissioner of Customs (Refund) issued deficiency memo dated 30.4.2002 asking the petitioner to submit finally assessed Bills of Entry. The petitioner submitted the finally assessed Bills of Entry on 2.5.2002, and on

the same day i.e. on 2.5.2002 the cheque of Rs. 45,07,059/- was issued and received by the representative of the petitioner.

16. It is stated in paragraph 13 of the counter affidavit that the petitioner became entitled to file claim of refund only after the Bills of Entry of were finally assessed. In the present case, the finally assessed Bills of Entry were submitted on 2.5.2002.

17. Before dealing with the controversy in this case we may refer to Section 27A of the Customs Act, 1962 which reads as follows:-

27A. Interest on delayed refunds- If any duty ordered to be refunded under Sub-section (2) of Section 27 to an applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that section, there shall be paid to that applicant interest at such rate, (not below five per cent) and not exceeding thirty per cent per annum as is for the time being fixed (by the Central Government, by notification in the Official Gazette), on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty;

Provided that where any duty, ordered to be refunded under Sub-section (2) of Section 27 in respect of an application under Sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the (Assistant Commissioner of Customs or Deputy Commissioner of Customs) under Sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under that Sub-section for the purposes of this section.

18. A perusal of Section 27A shows that if duty is not refunded within three months of the receipt of the application by the concerned officer interest as prescribed has to be paid by the department.

19. In the present case, the Deputy Commissioner of Customs by his order dated 16.2.2001 held that duty @ 25% was payable. This order was set aside by the Commissioner of Customs (Appeals) on 7.8.2001.

20. It is alleged in paragraph 10 of the writ petition that from August, 2001 onwards till February, 2002 the petitioner wrote several letters to the Deputy Commissioner of Customs, Commissioner of Customs, Chief Commissioner of Customs and the Chairman, Central Board of Excise & Customs stating that excise duty paid should be refunded to him.

21. A perusal of the order dated 16.2.2001 passed by the Deputy Commissioner,

copy of which is annexure 9 to the writ petition, shows that it is a final assessment order u/s 18(2) of the Customs Act and not a provisional assessment order. u/s 18(2)(a) the excess amount paid has to be adjusted to the final duty assessed and the importer is entitled to refund of the excess amount.

22. In paragraph 9 of the counter affidavit, it is admitted that the petitioner wrote a letter dated 21.8.2001, copy of which is annexure R-4 to the counter affidavit, to the Commissioner of Customs Air Cargo Unit, New Delhi referring to the order of the Commissioner (Appeals) dated 6.8.2001 which has held that the duty was payable only at 5% . The order of the Deputy Commissioner of Customs (Refund) dated 27.11.2001 annexure R-5 of the counter affidavit states that refund claim has been made by the petitioner.

23. Thus the letter of the petitioner dated 21.8.2001 to the Commissioner of Customs (Appeals) amounts to a refund claim, and in fact it has been regarded as such by the Deputy Commissioner of Customs (Refund) as is evident from his letter dated 27.11.2001 to the petitioner which is annexure R-5 to the counter affidavit. Thereafter reminders were also given by the petitioner.

24. Thus, the petitioner had clearly made a refund claim from 21.8.2001. Hence, the petitioner was entitled to interest on the expiry of six months from the date of the payment of the duty.

25. The duty had been admittedly paid by the petitioner under protest in April, 2000. It had filed a refund claim on 17.10.2000 with the Deputy Commissioner of Customs, Aircargo, New Delhi seeking refund of the excess refund duty paid by it in respect of the inkjet cartridges imported by them from 31.3.2000 to 30.4.2000.

26. The petitioner thus admittedly made the refund claim within time. Hence he is entitled to interest u/s 27A of the Customs Act within three months of making of the application for refund which was made, as stated above, on 21.11.2001. The period of three months from 21.11.2001 expired on 21.2.2002. The refund was actually given on 2.5.2002. Hence, the petitioner is entitled to interest u/s 27A from 21.2.2002 to 2.5.2002.

27. This petition is, Therefore disposed of with the above direction that the concerned customs authority shall compute the amount of interest payable under this order and shall pay the same to the petitioner within two months from the date of this judgment.

28. The petition is disposed of.