(1992) 03 CAL CK 0037

In the Calcutta High Court

Case No : Matter No. 5780 of 1988

Hindusthan Malleables and Forgings Ltd. APPELLANT

Vs

Asstt. Collr. of Cus. RESPONDENT

Date of Decision : 20-03-1992

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1992) 62 ELT 7

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : Samir Chakraborty and Sanjay Kr. Baid, for the Appellant;None, for the Respondent

Judgement

Ajoy Nath Ray, J.—In this application the writ petitioner claims for payment of export drawback as already ordered to be paid by an order of the Collector of Customs dated 16-9-1986, as upheld in revision by an order of the Central Government passed on 19th February, 1988.

2. The petitioner imported from one LECO Corporation of USA a particular X-Ray machine for the purpose of detection of impurities present in molten iron being traces of such metals as silicon, manganese and phosphorus. The machine duly arrived in India but while it was being set up it was found that certain components were defective and needed replacement.

3. The writ petitioner duly despatched these defective components and received back the replacement machinery in three fresh consignments. These three fresh consignments were treated as fresh imports for the purpose of payment of import duty.

4. The petitioner did not object to such payment of additional duty on the replacement parts because the petitioner would obtain 98% export drawback on the rate of duty on the value of the defective machinery that had been sent back to USA. Roughly speaking these two would cancel each other and the writ

petitioner would not be very much in the red.

5. It is true that the goods that were being despatched to USA, were not goods of any real value and it is also true that these did not represent export in the real sense of the term. But then again, the importation of the replacement parts made by the writ petitioner, were also not, in the real sense of the term, any fresh imports calling for payment of any further, fresh or additional duty.

6. The Collector of Customs was not dissatisfied with the procedure adopted by the writ petitioner, that in not treating both the despatch of the defective machinery to USA as a real export, and the importation of the replacement machinery as fresh import. The value of the goods upon which the writ petitioner paid import duty in obtaining replacements would also be the value of the goods to be taken for the purpose of calculating the export drawback payable to the writ petitioner.

7. Both the Collector of Customs and the Central Government have exonerated the writ petitioner from any charge of any impropriety and both have proceeded on the basis that the writ petitioner has adequately established the aforesaid facts of sending back defective machinery and obtaining the replacement in their stead.

8. Under those circumstances the export drawback claimed by the two bills forming annexure "J" to the writ petition before me should have been allowed in full. However, these have not been allowed in full and the values of claimed drawback, amount of duty, as well as the value of the goods have been scored out and lesser figures have been substituted.

9. Though a copy of Affidavit-in-Opposition was supplied to the writ petitioner for the presumable intention of the original being used at the hearing, yet no opposition is traceable in the records and none has appeared for the respondents before me. Three notices sent from M/s. R.L. Gaggar respectively dated 20-2-1992,25-2-1992, 27-2-1992 to the other side are to be kept on record being countersigned by the Court Officer.

10. I have permitted the filing of an Affidavit-in-Reply which had been kept ready in case the opposition had been tendered. The said reply should be kept on record, though, needless to say, I have had no occasion to look into the same, there being no opposition on record.

11. In the above view of the matter the respondents have refused to pay the claim on account of export drawback without any reasonable or just cause. Even the altered figures in the export drawback bill have not been paid to the writ petitioner. By reason of the all pervasive effect of Article 14 of the Constitution of India the respondents are not permitted not to honour the orders of payment passed by the Collector (Appeals) of Customs as well as the order of confirmation thereof passed in revision by the Central Government. There is no reason apparent why the export drawback bills as mentioned in Annexure-J to the

petition should not be paid in full. Any withholding of the sums claimed in the said bills is high-handed and totally unreasonable. The amounts claimed in the said bills under the head of ''amount of drawback'' aggregate the sum mentioned in prayer (g) of the writ petition namely Rs. 1,92,828.29. An order should accordingly be passed for refund of the same forthwith.

12. There shall accordingly be writs absolute as prayed for in prayers (a), (b) and (c) of the writ petition. The respondents shall, within a period of a fortnight of service of a copy of this order upon them, effect the refund order of the said sum of Rs. 1,92,828.29 to the writ petitioner or its authorised representative, failing which the writ petitioner will be entitled to take steps in accordance with law.

13. The respondents need not pay interest @ 18% p.a. as claimed and allowed by me above, in case the full principal sum mentioned above is cleared within the period of a fortnight indicated above; failing the same, the said interest would also have to be paid.

14. All parties to act on a xerox copy of this Dictated Order duly countersigned by the Assistant Registrar, Court upon the usual undertaking.

