(2012) 05 DEL CK 0442

In the Delhi High Court

Case No : Writ Petition (C) No. 6874 of 2010

Ilpea Paramount Ltd. APPELLANT

Vs

Joint Secretary, Department of Revenue RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:
Customs Act, 1962 — Section 129DD

Citation : (2013) 289 ELT 151 : (2013) 19 GSTR 637

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Pradeep Jain with Shubhankar Jha, for the Appellant; Satish Kumar, Senior Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. In the present case M/s. ILPEA Paramount Ltd., the petitioner herein, has impugned order dated 26-5-2010 passed by the Joint Secretary to the Government of India in exercise of jurisdiction u/s 129DD of the Customs Act, 1962 (''Act'', for short). By the said impugned order the Government of India has sustained the order passed by the lower authority directing that the petitioner should refund Rs. 12,76,496/-. Brief facts necessary for the disposal of the present writ petition are noticed.

2. The petitioner had exported magnetic straps by manual shipping bill dated 12-4-2002. The material was shipped on 1-6-2002 after the bill of lading was issued on 29-5-2002.

3. On 20-11-2002 the petitioner made a claim of payment/refund of duty drawback. On 25-7-2003 the petitioner filed an application for condonation of delay in filing the claim of drawback on the ground that the person dealing with the matter was on leave on account of prolonged serious illness of his mother who subsequently expired. Further, the application was delayed due to lack of knowledge and understanding on the part of others about the correct procedure

that was required to be followed. On 16-6-2004, the Assistant Commissioner cleared the drawback claim after condoning the delay and the drawback of Rs. 12,71,496/- was paid to the petitioner by cheque.

4. On 13-4-2005 the Assistant Commissioner issued show-cause notice for repayment/refund of drawback claim that was paid to the petitioner. Thereafter the order dated 21-11-2005 was passed by the Assistant Commissioner directing refund/repayment. Appeal filed by the petitioner before the Commissioner of Customs (Appeal) New Delhi was dismissed. The petitioner filed a Revision application u/s 129DD, which as noticed above stands dismissed vide order dated 25-6-2010.

5. The authorities have relied upon Rule 5 of the Re-Export of the Imported Goods (Drawback of Customs Duties) Rule, 1995. The drawback claim, it has been held, should have been filed on or before 19-7-2002 i.e. within a period of three months from the order permitting clearance; loading of goods for exportation by the proper officer of the customs. Further the Assistant Commissioner and the Deputy Commissioner of Customs could have condoned the delay for a period of three months and not beyond that. The three months'' period had also expired and therefore the application of the petitioner for condonation of delay could not have been allowed by the Assistant Commissioner.

6. It is admitted position that the petitioner had filed an application dated 25-7-2003 seeking condonation of delay in filing of the drawback claim. The application was addressed to the Commissioner of Customs, ICB PPJ, New Delhi. By implication it can be assumed that the Assistant Commissioner or some other authority had wrongly assumed jurisdiction and condoned the delay. In case the Commissioner of Customs or any other authority was not competent to condone the delay and the delay could have been condoned by the Board, the petitioner should have informed and asked to approach the Board. As noticed above in the present case the Assistant Commissioner had issued the refund order after examining the facts vide order dated 16-6-2004. The authorities/impugned order may be right that the refund claim was beyond the statutory period and therefore the refund was wrongly made, but they ignore the fact that the petitioner had filed an application dated 27-5-2003. The said application was required to be dealt with by the competent authority. It is accepted that the power to condone the delay beyond three months is with the Board. It will be appropriate in case the petitioner files an application for condonation of delay under Rule 7A the aforesaid rule which reads as under:-

7A. Power to relax. - If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorized agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods.

7. The petitioner will accordingly make an application referring to the earlier application made by them dated 25-7-2003 and the Board will examine the matter in accordance with law. We also clarify that it will be open to the Board if it deems appropriate to ask the petitioner to file an application in terms of the amended provisions applicable w.e.f. 17-6-2010. We express no opinion in that regard and leave it to the Board. The application will be made with all the details and particulars within four weeks and will be disposed of as expeditiously as possible, preferably within ten weeks from the date of filing of the application. The writ petition is disposed of accordingly.