(2016) 10 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 8401 of 2016 with S.C.A. No. 11962 of 2016

Jolly Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Citation : (2017) 345 ELT 343

Hon'ble Judges : S.R. Brahmbhatt and A.Y. Kogje, JJ.

Bench : Division Bench

Advocate : Shri Dipen Desai, Advocate, for the Petitioner; Shri Jaimin A. Gandhi and Devang Vyas, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

A.Y. Kogje, J. (Oral) - These petitions arise from the same factual background. With consent of both the parties, the petitions are taken up for hearing together. The facts from SCA No. 8401 of 2016 are taken.

2. This petition under Article 226 of the Constitution of India is filed praying inter alia for a direction to the respondents Revenue authorities to release an amount of Rs. 40 lakhs towards the claim of drawback along with interest as applicable under Section 75A of the Customs Act.

3. The facts in brief are that the petitioner is engaged in the manufacture and export of forgings and casting items. The petitioner is exporting such goods to the countries like Dubai, UAE, etc. The petitioner is duly registered with office of DGFT, Ludhiana.

3.1 In the due course of his business, the petitioner has exported various containers under different invoices and shipping bills in the period from April, 2014 to December, 2014. Such goods have already been cleared and the export transaction is concluded. The let export order under Section 51 of the Customs Act has been passed and the goods have also been assessed under Section 17.

No objection has been raised by the Department in connection with the classification, etc. However, though the petitioner is entitled to drawback, the Department is not deciding such application for drawback submitted by the petitioner.

4. Heard learned Advocate Shri Dipen Desai for the petitioner.

5. Learned Advocate for the petitioner took this Court through the relevant provisions pertaining to drawback being Sections 75, 75A and 76 of the Customs Act and contended that once the goods have been cleared for export and the goods have been released and exported and after the export commitments are fulfilled, there is no reason for withholding the drawback amount. He submitted that in connection with the consignments which are exported, the petitioner is not facing any departmental proceedings. He also submitted that even after the exports in question, subsequent exports have also been made by the petitioner, in connection of which also, the petitioner has not received any show cause notice from the Department.

5.1 In view of the aforesaid, he submitted that there appears to be no reason that the drawback application of the petitioner should be kept in suspension for all time to come. He submitted that the petitioner has reason to believe that on the ground that in subsequent transaction of export by some other exporter, seizure memos and show cause notices were issued and the inquiry is still underway, therefore on such remote cause, the Department has abruptly stopped release of drawback on the transaction which the petitioner is entitled to as there are no disputes in this connection.

5.2 Learned Advocate for the petitioner referred to and relied upon a decision of this Court rendered in SCA No. 13003 of 2015 and allied matters, where according to learned Advocate for the petitioner, the Court has observed that the Department cannot indefinitely delay or suspend consideration of the drawback claims. He submitted that in the case before the High Court, some objections were there directly against the petitioner as some DRI investigation was pending against him. Still, this Court has proceeded to grant relief in favour of that petitioner whereas the case of the present petitioner is on better footing as there is no investigation pending nor there is any seizure memo against the present petitioner. In such facts, the Department ought to have proceeded and rendered the decision on the drawback claim of the petitioner.

6. Learned Advocate Shri Jaimin Gandhi for the Department relied upon affidavit in reply filed on behalf of respondent Nos. 2 and 3 and contended that the claim of the drawback has not been decided as the investigation is carried out by DRI, Ahmedabad Zonal Unit on prima facie ground that the exports made are not proper. He further submitted that some query was raised in connection with the export which was visible on the website. Still, instead of responding to such query, the petitioner persistently send reminders to release of drawback claims. He therefore submitted that considering the conduct of the petitioner, if the

drawback claims were to be released pending investigation then eventually recovery from the petitioner on completion of the investigation contemplated would not be possible. He took us through the annexures to the affidavit in reply to indicate the nature of objections raised by the Department against the respective exporters undertaken by the petitioner against which he claims drawback.

7. Be that as it may, this Court is of the considered opinion that these petitions can be disposed of by issuing appropriate directions. This Court is of the opinion that the Department cannot indefinitely delay or suspend consideration of the duty drawback claims of the petitioner. No doubt, the Department is at liberty to inquire in full details about the export or import in connection with the transaction which is the basis for the claim of duty drawback. However, it is expected that such inquiry or investigation as contemplated by the Department cannot be prolonged beyond a particular point of time.

8. Considering the fact that Section 75A provides for payment of interest to the petitioners if the drawback claim is delayed beyond a period of one month, in that view of the matter, it would be prudent to direct the Department to conclude the investigation in contemplation or inquiry, if any, within a stipulated period of time, to which learned Advocate for the respondents prays for a period of six months to be given to the Department.

9. In view of the above, it would be appropriate for this Court to direct the Department concerned to complete the investigation/inquiry in connection with the transaction of the petitioner, for which duty drawback is claimed, within a period of six months from today. Thereafter, in case there is no further investigation/show cause notice within the stipulated period, the respondent Department shall process the rebate claim of the petitioner in accordance with law and may render a decision within a period of one month thereof.

10. With the aforementioned findings, the petitions are disposed of.

11. Direct service is permitted.

