(2016) 06 BOM CK 0161

In the Bombay High Court

Case No : Writ Petition No. 4105 of 2016 with W.P. Nos. 4106-4107 of 2016

Kaka Carpets APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

Citation : (2016) 338 ELT 353

Hon'ble Judges : S.C. Dharmadhikari and Dr. Shalini Phansalkar-Joshi, JJ.

Bench : Division Bench

Advocate : S/Shri Arshad Hidayatollah, Sr. Counsel with Sujay Kantawala, Anupam Dighe, Mrs. Shailaja Kher Hidayatollah and Karan Thackray i/b India Law Alliance, for the Petitioner; S/Shri Pradeep S. Jetly, Advocate, for the Respondent; Shri Ajithkumar, Additional D

Final Decision : Disposed Off

Judgement

1. We have heard Mr. Hidaytullah, learned Senior Counsel appearing for the petitioners and Mr. Jetly appearing for the respondents. Further affidavit filed by the petitioner is taken on record.

2. Mr. Jetly appearing on behalf of the respondents states that the Additional Director General of Revenue Intelligence, Mumbai and the deponent of the affidavitinsurrejoinder, Dr. Umair Mir are both present in Court.

3. The affidavit in sur rejoinder nowhere states that the petitioner''s drawbacks are withheld. Rather the affidavit amply clarifies that the drawback relating to fresh export has been processed. Mr. Jetly, on further instructions, states that only those drawbacks are not sanctioned where shipping bills are under investigation. There is no blanket direction to hold back the claims and particularly in relation to drawback. Mr. Jetly submits that the affidavit points out as to how the sanction/disbursement of drawback in a particular shipment takes some time, usually a period of a month after filing of export bills by the shipping line. The actual processing of the drawback claim also takes sometime. There are

lot of shipping bills and which have been placed serially or in a queue. That is why these requests and the sanction thereof takes some time. In such circumstances, on instructions, it is stated that within a period of 3060 days from the date of shipment, the drawback claims in relations to the petitioner would be processed and duly sanctioned. This would be the process followed in relation to all the drawback claims where the shipping bills are not under investigation.

4. Mr. Hidayatollah, learned Senior Counsel submits that in pursuance of the earlier orders only part compliance has been made. In that regard the additional affidavit filed today is relied upon by Mr. Hidayatollah to submit that the Petitioner No. 2 personally visited the office of the Deputy Commissioner of Customs at Nhava Sheva in relation to the processing of drawback claims. This Deputy Commissioner at Nhava Sheva informed the representative of the petitioner that they have received an internal letter from the Directorate of Revenue Intelligence and in the light of the same, the drawback or rebate claim of any nature cannot be processed. According to the learned Senior Counsel, the representative was informed that this pertains to the two entities i.e. Shobha Woollens Pvt. Ltd. and Kaka Overseas Ltd. However the Directorate of Revenue Intelligence has reconfirmed that there is no such alert, yet, the drawbacks are withheld. Therefore, specific directions would be necessary.

5. Mr. Jetly, on instructions, stated that there is no such internal communication or letter but what must have been notified or informed is the pendency of certain investigation and which is restricted to some shipping bills. There is no blanket order or internal letter or communication as is complained. We have no doubt in our mind that if what is stated today by Mr. Jetly in presence of two senior officials of Directorate of Revenue Intelligence and which statements are accepted as undertaking given to this Court that any drawback in claim and which is pending would be processed as above, then, there should be complete coordination between the Director General of Revenue Intelligence and the Customs Commissionerate at the Port. It appears that despite communication by the counsel engaged by both the DRI and Customs House, the orders of this Court, the authorities are not acting in accordance with law. We expect the Directorate now to inform the Customs House of Nhava Sheva about today''s order and directions. We do not think that information of any internal letter or communication is available under the Right to Information Act, 2005. The claimants ought to know as to, when the State facilitates export and when valuable foreign exchange has been brought in the country, why his rebate or drawback claims have not been processed, why they are held back and if there are certain investigations initiated, when would they be completed and any information is required about such export. There should be complete transparency and openness in this regard. We do not approve of the tendency of the authorities in not conducting the investigation expeditiously although they have noticed that false and bogus claims are being raised by certain exporters. There is no need to treat all exporters alike if it is only some exporters who are indulging in a wrongful act. Until such investigations against some entities are in

progress, there is no need to hold back all drawbacks and by a wholesale direction or some internal communication, the details of which are not available for consumption of exporters. We hope and trust that the pending investigation would be concluded expeditiously by 30-9-2016. We do not grant any further time. Post the matter for compliance after 30-9-2016.

6. The Writ Petition is disposed off as above. No costs.

