**(2015) 08 MAD CK 0066**

**In the Madras High Court**

**Case No :** W.P. (MD) No. 15003 of 2015 and M.P. (MD) No. 1 of 2015

Karur K.C.P. Packkagings Ltd. — APPELLANT

Vs

Commissioner of Cus., Tuticorin — RESPONDENT

**Date of Decision :** 27-08-2015

**Acts Referred:**
Customs Act, 1962 — Section 27A, 74, 75, 75A

**Citation :** (2015) 324 ELT 58

**Hon'ble Judges :** T. Raja, J.

**Bench :** Single Bench

**Advocate :** A.K. Jayaraj, for the Appellant; R. Aravindan, for the Respondent

## Judgement

T. Raja, J.—This Writ Petition has been filed by Mr. T. Madhaiyan, General Manager (Works) representing M/s. Karur K.C.P. Packagings Limited, seeking a Mandamus, directing the Assistant Commissioner of Customs (Draw Back), Tuticorin, the 3rd respondent herein, to pay and settle the interest at the rate of 18% payable on the sanctioned and paid Duty Drawback Claim amount entitled to by the petitioner, for the period 18-2-2010 to 24-9-2010, as per Section 75A of the Customs Act, 1962. Heard Mr. A.K. Jayaraj, the learned counsel appearing for the petitioner and Mr. R. Aravindan, the learned standing counsel appearing for the respondents.

2. On earlier occasion, while dealing with a prayer made by the petitioner, to direct the Assistant Commissioner of Customs (Drawback), Tuticorin, to settle and release the pending balance Duty Drawback Claim Amount, entitled to the petitioner, for the period from 18-2-2010 to 24-9-2010, in the light of the Notification No. 103/2008-Customs , dated 29-8-2008, issued by the Government of India, Ministry of Finance and the decision of DGFT Committee Meeting No. 17/AM-14, dated 25-7-2013, I allowed the said prayer, by an order dated 3-12-2014 by me. The relevant portion of my order reads as follows:-

"9. Apart from the above, the issue also has been decided by the Director

General of Foreign Trade, Udyog Bhawan, classifying that Flexible Intermediate Bulk Containers are covered under ITC (HS) Code 63 and not under ITC (HS) Code 39. The Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi, in Circular No. 42/2011-Cus. , dated 22-9-2011, F. No. 609/82/2011-DBK, also has settled the dispute regarding the classification of FIBC by bringing it under Chapter 63, therefore, this Court has no hesitation to allow the prayer made by the petitioner.

10. In view of the above, a Mandamus is issued directing the 3rd respondent to settle and release the pending balance duty drawback claim amount entitled to the petitioner for the period 18-2-2010 to 24-9-2010 in the light of the Notification No. 103/2008-Customs , dated 29-8-2008 issued by the Government of India, Ministry of Finance and as per the decision of DGFT Committee Meeting No. 17/AM-14, dated 25-7-2013, within a period of two weeks from the date of receipt of a copy of this order. Needless to mention that in the event of success by the respondents before the CESTAT in the pending appeal, it is always open to the respondents department to take recourse under Rule 16 of the Customs Central Excise Duties Service Tax Drawback Rules, 1995."

3. In the light of the above direction, the Assistant Commissioner of Customs (Drawback), Tuticorin, has sanctioned Drawback claim amount entitled to by the petitioner on execution of personal bond for a value of 1.9 Crores in respect of 192 shipping bills. However, the petitioner was requested to intimate the outcome of the classification, which was pending before the learned CESTAT, Chennai, for taking further necessary action. Now, the learned CESTAT also in its order, dated 3-8-2015, in Appeal Nos. E/76/2011 and E/146/2012 categorically has held that Flexible Intermediate Bulk Containers (FIBC) is rightly classifiable under 63053200 and not under 39232990. Accordingly, the learned CESTAT has further found that there was no infirmity in the order passed by the Commissioner (Appeals) and finally dismissed the appeals preferred by the Revenue. Now, in view of the final decision rendered and concluded, the petitioner is entitled to get the interest on Drawback, as per Section 75A of the Customs Act, 1962. In this regard, it is relevant to extract Section 75A of the Customs Act, which reads as under:-

75A. Interest on drawback.-

(1) Where any drawback payable to a claimant under Section 74 or Section 75 is not paid within a [period of [one month] from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under Section 27A from the date after the expiry of the said period of [one month]] till the date of payment of such drawback.

(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to

 

the said amount of drawback, interest at the rate fixed under Section 28AB and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback."

4. A mere perusal of the above Section goes to show that where any drawback payable to the claimant is not paid within a period of one month from the date of filing a claim for payment of such drawback interest at the rate fixed under Section 27A from the date after the expiry of the said period of one month is payable to the petitioner. Therefore, when it is made clear that the petitioner is entitled to claim interest, as per Section 75A and further notification with regard to quantum of interest and also as per Notification No. 18/2011-Customs (N.T.) , dated 1st March 2011, 18% interest per annum having already fixed by the Central Government is hereby fixed. In the result, the Writ Petition is allowed and the 3rd respondent is hereby directed to pay the interest at the rate of 18% on the sanctioned and paid duty drawback claim amount entitled by the petitioner for the period from 18-2-2010 to 24-9-2010, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.