

(1984) 12 BOM CK 0007

In the Bombay High Court

Case No : Writ Petitions No's. 600, 604 and 605 of 1981

London Star Diamond Co. (India) Private Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-12-1984

Acts Referred:

Customs Act, 1962 — Section 28, 75

Citation : (1984) 12 BOM CK 0007

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. u/s 75 of the Customs Act, 1962, where it appears to the Central Government that in respect of any goods manufactured in India and exported, a drawback shall be allowed of customs duties on any imported materials, it may direct that drawback shall be allowed in respect of such goods. By a public notice dated 15th October 1971 the Central Government notified a Schedule of the materials entitled to drawback and the rates thereof.

2. On 7th October 1977 Sub-Sr. No. 5804 of the Schedule was substituted to read thus :

-----					Sub-Sl. No.
Description	of	goods	Rate	of	drawback
-----					5804
polished diamonds of not less 3% (Three per than 12 pieces per carat. cent only)	of	the	f.o.b.		Cut and value.
-----					Provided that -

1. The above rate shall apply only to :-

(i) the shipments made by the exporter in discharge of his export obligation in respect of imports of rough diamonds under the advance licenses issued by the Chief Controller of Imports and Exports;

(ii) shipments of cut and polished diamonds manufactured out of rough diamonds imported against replenishment licenses or Release Orders issued by the Licensing authorities subject to the following conditions.

(a) The exporter is the same who had originally imported the rough diamonds against REP licenses/Release orders.

(b) The importer at the time of the import of rough diamonds makes a declaration in the Bill of Entry that they would be exporting within a period of six months, from the date of importation, under claim for drawback cut and polished diamonds (of not less than 12 pieces per carat) manufactured therefrom. He will also indicate in the Bill of Entry, duly supported by the import invoice) the sieve size, caratage, and the type of rough diamonds imported and any other particulars that would render possible the co-relation of the imported roughs with the cut and polished diamonds to be exported.

(c) The exporter declares in the export invoices attached to the Shipping Bill the sizes of cut and polished diamonds being exported, and establishes to the satisfaction of the Assistant Collector of Customs, the broad co-relation between the sizes of rough diamonds imported earlier and the export goods.

2. The drawback amount shall not exceed the amount of duty paid under the relevant bills of entry relating to such imports against the concerned Advance or Replenishment licenses.

----- 3. On 7th April 1978 a public notice was issued which stated that "the existing sub-serial No. 5804 and entries relating thereto shall be dated." The petitioners in each of the three petitions imported rough diamonds after 7th October 1977 and made declaration upon the bills of entry thereof that the same diamonds would, after being cut and polished, be exported within six months so as to claim the drawback. After 7th April 1978 the petitioners exported the imported diamonds after they had been cut and polished and claimed the drawback thereon. After verification of the petitioners' claims the respondents granted and paid to the petitioners the drawback amounts.

4. Thereafter the petitioners received notices from the Assistant Collector of Customs which said that the drawback amounts had been erroneously refunded. The notices called upon the petitioners u/s 28 of the Customs Act, 1962, to explain why the drawback amounts should not be recovered from them.

5. In their replies the petitioners stated that the exports had been effected under claims for drawback which had been accepted by the department and, after verification, the drawback amounts had been paid. The public notice dated 7th April 1978 could not have retrospective effect. In any event, the claim for refund was barred u/s 28.

6. The Assistant Collector of Customs confirmed the demands upon the basis that, since the exports had been effected after 7th April 1978, the payments

were erroneous.

7. The petitioners filed appeals. By identical orders the Appellate Collector of Customs dismissed the appeals. From the wording of the public notice dated 7th April 1978 he observed that sub-serial number 5804 and the entries therein were deleted from the table published in the public notice dated 7th October 1977. Therefore, the demand issued was legally maintainable. Once it was found that no drawback amount was due to be paid to the petitioners with effect from 7th April 1978, whatever amount had been paid erroneously "stood recovered". The plea that Rule 14 had to be read with Section 28 could not be upheld for Rule 14 specifically provided for the recovery of erroneous payment of drawback. No promise had been to the petitioners and the doctrine of promissory estoppel did not apply. The petitioners had relied upon the fact that the public notice dated 7th April 1978 did not state that it was issued in supersession or modification of the public notice dated 7th October 1977, but it was, obvious that the entries under sub-serial number 5804 were deleted thereby. The public notice dated 7th April 1978 had to be given effect to as it was worded. If it took away the item relating to rough uncut diamonds from the drawback schedule, it automatically meant that the drawback rate thereon would be nil and, as such, it could not be said that the payments of drawback to the petitioners were not erroneous.

8. Pending the appeal, the petitioners had furnished bank guarantees in the amounts of the drawback claimed from them. After the orders in appeals the bank guarantees were realised.

9. In the first petition, i.e., Writ Petition No. 600 of 1981, the petitioners had also exported consignment of diamonds, imported under the provisions of the public notice dated 7th October 1977, by air. They had claimed the drawback thereon and had received payment. They were served with a notice to show cause why that payment should not be recovered from them. The Assistant Collector of Customs had confirmed the demand. The appeal filed by them is pending.

10. It may be mentioned that in respect of identical orders passed by the Appellate Collector of Customs some importers/exporters of diamonds filed appeals before the Customs Appellate Tribunal. By its judgment and order dated 24th December 1983 the appeals were allowed. Very fairly, Mr. Deodhar, learned counsel for the respondents, had told me that he wanted to ascertain from his clients whether they had accepted the judgment of the Customs Appellate Tribunal. It is a matter of regret that, though several weeks have elapsed since the time he first told me that he had sought instructions, they have not yet given to him.

11. It was submitted by Mr. Hidayatullah, learned counsel for the petitioners, that the public notice dated 7th April 1978 operated only prospectively and could not be so read as to defeat rights which had accrued to the importers under the public notice dated 7th October 1977. He submitted that the show cause notices issued to the petitioners were governed by Section 28 of the Act and were out of

time. He also submitted that the respondents were estopped from making any claims for repayment of the drawback amounts. Lastly, it was his submission that the public notice dated 7th April 1978 had effect only in respect of replenishment licenses. The petition also challenges the vires of Rule 14, but no argument in that behalf has been advanced before me.

12. I shall confine myself to the argument that the public notice dated 7th April 1978 operates only prospectively. The observations of the Supreme Court in *Bharat Barrel and Drum Mfg. Co. (P) Ltd. Vs. The Collector of Customs, Bombay and Another*, , are apposite. A public notice prescribed the condition that imported steel sheets must be of prime quality. The Public notice was sought to be applied to sheets imported under licenses issued before the date of the public notice. The Supreme Court observed that the officer of the Central Government who heard the revision applications was rightly of the view that the public notice prescribing prime quality had no retrospective operation and the condition of prime quality was inapplicable to licenses issued before the date of the public notice. Importers, like the petitioners, who imported rough, uncut diamonds and declared upon the bills of entry thereof, as was required by the public notice dated 7th October 1977, that they would export the same diamonds within six months after cutting and polishing them became entitled to receive the drawback of 3% upon fulfillment of the condition. The public notice dated 7th April 1978 cannot be read in a manner that would seem to take away such right. The only manner in which it can be read is that it operates prospectively.

13. This, incidentally, is also the view taken by the Customs Appellate Tribunal.

14. It is unnecessary, then, to go into any of the other submissions advanced on behalf of the petitioners.

15. Having regard to the fact that the bank guarantees were realised by the respondents with interest, the petitioners are entitled to interest at the rate of 18% p.a.

16. The petition is made absolute in terms of prayers (a) and (b)(ii). In the case of the first petition the petition is also made absolute in terms of prayer (b)(iii).

17. The respondents shall pay to the petitioners the costs of the petitions.

18. Rule accordingly.