(1991) 06 BOM CK 0019

In the Bombay High Court

Case No : Appeal No. 604 of 1987 in Writ Petition No. 524 of 1987 and Appeal No. 605 of 1987 in Writ Petition No. 2634 of 1986

Mehul Metal Industries — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 20-06-1991

Acts Referred:

Citation : (1992) 57 ELT 39

Hon'ble Judges : S.P. Bharucha, J;M.F. Saldhana, J

Bench : Division Bench

Advocate : Shri S.S. Shah, for the Appellant; Shri J.P. Devdhar and Shri K.C. Sidhwa, for the Respondent

Judgement

Bharucha, J.—There are appeals arising upon a common judgment whereby two writ petitions filed by the appellants were dismissed with no order as to costs.

The petitions concern duty drawback on imported materials used in manufacture of goods which were exported and relate to the Customs and Central Excise (Duties Drawback) Rules, 1971.

In November 1984 the petitioners purchased from the Minerals and Metals Trading Corporation of India 9 metric tons of aluminium or stainless steel sheets at the rate of Rs. 51/- per kg. Duty drawback in respect of these goods was fixed by the respondents at the rate of 0.80 per kg. On 1st April 1985 the petitioners applied for a revision of the rate so fixed under Rule 7 of the said Rules. On 22nd May 1985 the respondents revised the rate of duty drawback and allowed it to the petitioners at the rate of Rs. 60.30 per kg.

In the meantime, on 27th April 1985 the petitioners purchased from the MMTC 35 metric tons of aluminium or stainless steel sheets at the rate of Rs. 51 per kg. Again the respondents fixed the rate of duty drawback at the rate of 0.30 per kg. On 2nd September 1985 the petitioners applied for revision of the said rate under the said Rule 7. On 17th October 1985 the said rate was revised and allowed to the petitioners at Rs. 60.80 per kg.

On 7th May 1986 the respondents modified their order dated 17th October 1985 and reduced the rate of duty drawback from Rs. 60.80 per kg to Rs. 44.85 per kg.

The petitioners then filed in this court a writ petition, being O.O.C.J. Writ Petition No. 1453 of 1986, impugning the order dated 7th May 1986. On 19th September 1986 Kurdukar, J. allowed the Writ petition on the ground that the order of 7th May 1986 had been passed in violation of the principles of natural justice.

On 29th August 1986, while the aforementioned writ petition was pending, the respondents passed an order whereby it was stated that "the drawback rate has been brought down to Rs. 44.85 per kg. with retrospective date" and it covered claims which had already been processed as therein mentioned. The letter referred to an alleged to an alleged excess payment of Rs. 1,69,926.72 which the respondents purported to adjust against current claims. On 17th October 1986 the petitioners filed in this court another writ petition (being O.O.C.J. Writ Petition No. 2634 of 1986) there against.

Pursuant to the order passed by Kurdukar, J. allowing Writ Petition No. 1453 of 1986 the respondents issued to the petitioners notices to show cause on 17th October and 13th November 1986. The notice stated "that on enquiry it is gathered that the MMTC of India had not recovered the full landed cost, viz., the CIF value plus the import duty on the imported stainless steel sheets supplied to you for the manufacture of export product, but charged a lower price of Rs. 51/- per kg. approx. in the transaction. Hence, to the extent that there is a shortfall in the recovery of the import duty by way of supply of stainless steel sheets to you, it is proposed that the brand rate already sanctioned under the above mentioned rate letter (which was based on the full import duties on import of stainless steel sheets should be revised accordingly." On 12th November 1986 the petitioners replied to the show cause notice. The petitioners were heard on 20th January 1987. The respondents passed an order dated 20th January 1987 confirming the revision of the drawback rate at Rs. 44.85 per kg. The order stated that it was "revealed that M.M.T.C. of India has not recovered the full landed cost, i.e. (C.I.F. price plus import duties) of the imported material supplied to you. Hence the drawback of the full import duties, as claimed by you is not admissible.

2. In view of the above position, it has been decided to revise the drawback rates issued in your favour under rule 7 of the above mentioned rules by amending this Ministry''s rate letter as mentioned below :-

Rate letter F.N. 604/3801/34/85 (BOM. 894) dated 17-10-1985

Rate of Drawback per Kg.

For : Rs. 60.80 please read as Rs. 44.85 Kg."

This order was impugned by the petitioners in a Writ Petition, being O.O.C.J. Writ Petition No. 524 of 1987.

By the judgment and orders under appeal the learned single Judge dismissed Writ Petition No. 524 of 1987 as also Writ Petition No. 2634 of 1986. The order of Kurdukar J. dated 19th September 1986 in Writ Petition No. 1453 of 1986 set aside the order of the respondents dated 7th May 1986 revising the already granted rate of duty drawback of Rs. 60.80 to Rs. 44.85 because no show cause notice had been issued in this behalf to the petitioners and because there was, therefore, a violation of the principles of natural justice. The learned Judge permitted the respondents to take action as was permissible in law and in accordance with law. This implied not only that the petitioners should be served with a show-cause notice and granted a personal hearing but also that the respondents should pass a speaking order, i.e. to say, an order which gave reasons. The order that has been passed on 20th January 1986 and which is impugned in the writ petition cannot be said to give reasons which are germane to the matter before the respondents. In considering the rate of duty drawback the respondents were obliged to take account, of Rule 3 of the said Rules. Particular emphasis in this regard must be laid upon sub-clause (d) of Sub-Rule (2) which provides that the respondents shall have regard to "the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents". In the order passed earlier the petitioners had set out what, according to them, was the percentage of wastage. The respondents (as is shown by Ex. 2 in Writ Petition No. 2634 of 1986) had verified the correctness of that percentage. There is not even a whisper about the element of wastage in the order that is now impugned. It is not stated that the element of wastage then verified by the respondents was erroneous.

If the only reason for passing the order dated 20th January 1987 is that stated in the show-cause notice dated 17th October 1986 and 13th November 1986 then that reasoning appears, prima facie, to be irrelevant to the considerations specifically set out for the purpose in Rule 3 of the said Rules. The order dated 20th January 1987 must, therefore, be quashed and set aside. The respondents shall be at liberty, after giving to the petitioners the opportunity of a fresh hearing, to pass a fresh order upon the show-cause notices dated 17th October and 13th November 1986. So that there should be no confusion once again, we make it clear that the order shall be a speaking order which shall give reasons which shall be germane and which shall take into account each and every one of the factors which are set out in Rule 3 of the said Rules. It shall set out, if that is necessary, why the verification of wastage made by the respondents earlier is found to be unworthy of acceptance.

The writ petition challenging the order dated 29th August 1986 (being Writ Petition No. 2634 of 1986) must, therefore, also be made absolute and the letter dated 29th August 1986 quashed. The respondents shall be at liberty to issue a show-cause notice to the petitioners in regard to the proposed retrospective revision of duty drawback. The petitioners shall be heard and a speaking order shall thereafter be passed which shall conform to the requirements that we have already set out.

The appeals are allowed. The judgment and orders under appeal are set aside. Writ Petitions Nos. 2634 of 1986 and 524 of 1987 are made absolute as aforesaid. The respondents shall pay to the petitioners the costs of petition in Writ Petitions No. 524 of 1987 throughout. There shall be no order of costs in regard to Writ Petition No. 2634 of 1986.