(2013) 07 DEL CK 0378

In the Delhi High Court

Case No : Writ Petition (Civil) No. 577 of 1992

M/s. M.D. Textile Industries Limited — APPELLANT

Vs

Assistant Collector of Customs and Others — RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:
Customs Act, 1962 — Section 27, 27(1), 27A

Citation : (2013) 298 ELT 368

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Judgement

Sanjiv Khanna, J.—M/s. M.D. Textile Industries Limited has filed the present writ petition for refund of customs duty of Rs. 3,59,744.95 with interest from 22nd May, 1989.

The following order was passed on 4th March, 1993:

On a consideration of the matter, we are of the view that the petitioner would be entitled to refund, subject to the plea of undue enrichment, if any, available to the respondents. Mr. Lokur says that the respondents would examine the matter and will pass an order on merits within a month from today, without insisting on the documents sought to be produced from the petitioner in their letter dated 24th January, 1992.

To be listed for arguments on 22nd April, 1993.

2. In the order dated 22nd April, 1993 it is recorded that the respondents had issued refund to the petitioner on 17th March, 1993 and the question of interest from the date of payment till refund would be examined. For this purpose, Rule was issued and now the writ petition has been listed for hearing. No one has appeared for the petitioner and the respondent, but we notice that a limited and short issue arises for consideration and we have examined the court record and proceed to dictate our decision.

3. The petitioner had imported multi cable transit (cable sealing system) against bill of entry No. 106913 at ICD, Delhi and sought clearance under the heading 8547.20. Dispute arose with the respondents taking the stand that the goods should be classified under the heading 39.26 of the Customs Tariff Act, 1975 and the Assistant Collector passed an order dated 29th April, 1989. The petitioner partly succeeded before the appellate authority, i.e., Collector (Appeals) who remanded the matter for de novo adjudication by the Assistant Collector. Assistant Collector vide order dated 13th August, 1991 accepted the contention of the petitioner and assessed the bill of entry under the heading 8547.20 as claimed by the petitioner.

4. In the meanwhile, the consignment had been released on the petitioner paying the admitted duty and 50% of the disputed duty pursuant to directions by the High Court in writ proceedings.

5. On 29th August, 1991, the petitioner filed an application for refund of Rs. 3,59,744.95 in view of the assessment order dated 13th August, 1991 but when no refund was granted, this writ petition was filed in February, 1992. We have already noted that refund of Rs. 3,59,744.95 was issued on 17th March, 1993 after delay of about one and a half years. The short question is whether the respondents should pay interest for the said delay in refund.

6. We feel that the respondents should pay interest for the said delay as there is no justification and reason whatsoever in not refunding the amount. In the counter affidavit, the respondents have stated and accepted that the petitioner had made an application for refund on 29th August, 1991 but the same was not processed as the respondents had a right to file an appeal within 90 days, i.e., till 13th November, 1991 and in the meanwhile Section 27 of the Customs Act was amended with effect from 18th September, 1992. It is submitted that thereafter the respondents had written letter dated 24th January, 1992 asking for original appellate order and the original order against which the appeal was filed. We fail to understand the logic and the reasoning given in the counter affidavit. In the present case, the refund had become due and payable on the basis of the assessment order itself, which was passed after the order of remand made by Collector (Appeals). Further, the petitioner vide their letter dated 30th January, 1992 had stated that they had already submitted photocopy of the adjudication order dated 13th August, 1991 along with their application for refund. By this letter they enclosed copy of the original assessment order and the Collector (Appeals) order setting aside the first original assessment. Moreover, the proviso to Section 27(1) states that where an application for refund had been made before Central Excise and Customs Law (Amendment) Act, 1991, i.e., 20th September, 1991, such application shall be deemed to have been made under the subsection and the same will be dealt with in accordance with the provisions of Section 2. Admittedly, in the present case the application for refund is dated 29th August, 1991 whereas the amendment by Central Excise and Customs Law (Amendment) Act, 1991 was made applicable with effect from 20th September,

1991. The said application should have been processed without requirement of fulfilling additional or new conditions imposed by the said amendment.

7. The view we have taken is in consonance with the Division Bench decision of this Court in Tata Infotech Ltd. Vs. Collector of Customs, , wherein it has been observed:

8. From the factual scenario, projected above, it is clear that the claim of the petitioner for refund of the amount realised by the respondent on encashment of bank guarantee is not contested.

As noted above, the principal amount, so recovered, has been refunded to the petitioner on filing of the present writ petition. It is, Therefore, axiomatic that after the appeal of the petitioner was allowed by the Tribunal in their favor, there was no justification whatsoever not to refund the excess customs duty recovered. As noted supra, even Board''s circular dated 3 June 1998 clarifies that the refund is not to be withheld on the ground that an appeal is filed against the order giving relief to an assessed unless a stay order has been obtained.

Admittedly in the present case no appeal had been preferred by the respondent. The bank guarantee was encased by the respondent and, Therefore, the petitioner was not under any obligation to obtain information with regard to the credit of the said amount in respondent''s account or to find out whether the respondent had challenged Tribunal''s order, as they were required to do vide respondent''s letters dated 22 January 2000 and 22 December 2001. Yet the information sought was furnished along with documentary evidence as far back as on 7 March 2001 and again on 13 February 2002. More than one year elapsed even thereafter but the respondent did not think it fit to respond to petitioner''s request. In the reply affidavit filed on behalf of the respondent no answer is furnished as to why this inordinate delay in issue of refund order took place. Nothing has been brought on record by the respondent to explain this delay. It is, Therefore, to be presumed that despite the Board''s circular and Section 27A of the Act, the authorities concerned, in their own wisdom, did not think the matter to be so urgent as to immediately respond to petitioner''s request and promptly issue the refund order. Nonetheless, it shows a disdainful and recalcitrant attitude of the respondent.

9. Under the circumstances, we are of the considered view that in the present case, the respondent has withheld the refund of Rs. 7,08,050/-, which became due to the petitioner on the passing of the order by the Tribunal on 21 December 1999, without any rhyme or reason and, Therefore, they are liable to pay interest to the petitioner.

10. Resultantly, the writ petition is allowed; rule is made absolute and the respondent is directed to pay to the petitioner simple interest at the rate of 12% per annum on the afore-mentioned amount of refund for the period from the date of the order of the Tribunal till the date of the actual payment of the principal amount. The interest amount shall be paid within a period of four weeks

from today. The petitioner shall also be entitled to costs, quantified at Rs. 10,000/-.

Accordingly, we allow the present writ petition and direct the respondents to pay interest with effect from 29th August, 1991 till the date of actual payment, i.e., 17th March, 1993 @ 12% per annum. The aforesaid payment will be made by cheque within a period of two months from the date copy of this order is received by the respondents. The writ petition is disposed of, without any order as to costs.