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(2012) 02 MAD CK 0272

In the Madras High Court

Case No : Writ Petition No. 7290 of 2011

Novozymes South Asia Pvt. Ltd. APPELLANT

Vs

Asstt. C.C. (Drawback), Chennai RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 51, 74, 75A

Citation : (2012) 02 MAD CK 0272

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Joseph Prabakar, for the Appellant; P. Mahadevan, CGSC, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—Heard the Learned Counsels appearing for both sides. The writ petitions have been filed praying that this Court may be pleased to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the respondent dated 6-12-2010, and quash the same, and to direct the respondent to grant Duty Drawback, in favour of the petitioner, u/s 74 of the Customs Act, 1962.

2. It has been stated that the petitioner is a company incorporated under the Companies Act, 1956. It is engaged in the manufacture and sale of industrial enzymes. In the course of its business the petitioner had imported certain goods, for repacking and for further sale. However, the imported goods were found to be defective in nature. Therefore, the goods in question were re-exported, after due inspection, by the officer concerned, on 23-7-2009, vide Shipping Bill Nos. 13131, 13132 and 13136, dated 16-7-2009. Consequent to the re-export of the goods, the petitioner had filed a claim for Duty Drawback of 98% of the Basic Customs Duty and 100% of the Additional Duty of Customs, amounting to a sum of Rs. 5,00,195/-, u/s 74 of the Customs Act, 1962.

3. It had been further stated that the claims had been filed under three separate applications, on 15-9-2009, in the format prescribed under Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 (hereinafter referred to as ''the Drawback Rules'') It has been further stated that, as per Annexure-II of the Drawback Rules, all the necessary documents had been furnished, by the petitioner, to the respondent, for claiming the drawback of the customs duties. However, the respondent had issued a Deficiency Memo, dated 23-10-2009, directing the petitioner to produce the (1) Non-Availment of Cenvat Certificate/Declaration, and the Bank Realization Certificate/GR Waiver.

4. Pursuant to the receipt of the Deficiency Memo, dated 23-10-2009, the petitioner had filed the Central Value Added Taxes Certificate, vide letter, dated 24-12-2009. The petitioner had also produced the Bank Realization Certificate from the Bank concerned, showing the details of the payments received, on 3-11-2010. While so, by a letter, dated 6-12-2010, the respondent had stated that the claim filed by the petitioner company has been treated as ''Claim Not Filed''. Thus, the respondent had returned the Drawback claims filed by the petitioner, along with the original documents, alleging that the petitioner had not submitted the documents set out in the Deficiency Memo, dated 23-10-2009. On receipt of the said communication, dated 6-12-2010, the petitioner had attempted to resubmit the drawback claims, along with the required documents. However, the respondent had declined to accept the drawback claims, on the ground that they were time-barred. In such circumstances, the petitioner has preferred the above writ petitions, before this Court, under Article 226 of the Constitution of India.

5. In the counter affidavit filed on behalf of the respondents, it has been stated that the petitioner has preferred the above writ petitions before this Court, without availing the alternative remedy available to the petitioner. If the petitioner was aggrieved by the order passed by the respondent, an appeal could have been preferred before the Commissioner (Appeals). Thereafter, if necessary, a Revision could have been filed before the Revision Authority, New Delhi.

6. It has been further stated that the petitioner had filed the shipping bills, for the re-export of the industrial enzymes, u/s 74 of the Customs Act, 1962. As per the proviso to Rule 5(1) of the Drawback Rules, a claim for drawback shall be filed in the form found in Annexure-II of the said Rules, within a period of three months from the date on which an order permitting clearance and loading of goods, for exportation, u/s 51 of the Customs Act, 1962, is made, by the proper officer belonging to the Customs Department.

7. It has been further stated that, as per the proviso to Rule 5 (1) of the Drawback Rules, the petitioner ought to have submitted the necessary documents described therein. The petitioner was also expected to file all the other documents, as specified in the Deficiency Memo issued to the petitioner. The petitioner had submitted the copies of the shipping bills and the other necessary documents. Further, Deficiency Memos, dated 11-5-2009, 11-8-2009

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and 23-11-2009, were issued to the petitioner, with the direction to submit all the necessary documents, including the Bank Realization Certificate/GR Waiver and the Central Value Added Taxes Certificate, issued by the Central Excise authorities. However, the petitioner, vide letters, dated 26-8-2009 and 27-5-2009, had submitted only some of the documents, which had to be submitted, as per Rule 5(1) of the Drawback Rules. The petitioner had not submitted certain documents like the Bank Realization Certificate/GR Waiver and the Central Value Added Taxes Certificate.

8. It had also been stated that, as per the proviso to Rule 5(4) of the Re-export of imported goods (Drawback of Customs Duties) Rules, 1995, any claim which is incomplete, in any material particulars, or is without the documents specified in sub-rule (2), shall not be accepted for the purpose of Section 75A and such claim shall be returned to the claimant with the Deficiency Memo, within fifteen days of the submission of the claim and it shall be deemed not to have been filed, unless the exporter complies with the requirements specified in the Deficiency Memos, within 30 days from the date of the receipt of the said memo. As the exporter had not submitted all the required documents, as per the deficiency memos, issued by the respondent, within the specified period of 30 days, the claims made by the petitioner had been returned to the exporter, as per Rule 5(2) and 5(4)(a) of the Drawback Rules, and the claims were treated as ''Not Filed''. Accordingly, the claims made by the petitioner cannot be considered by the respondent, as it had been time-barred.

9. The Learned Counsel appearing on behalf of the petitioner had submitted that the communication issued by the respondent, refusing to accept the Duty Drawback claim of the petitioner, is contrary to the provisions of Section 74 of the Customs Act, 1962, and Rule 5(2) of the Drawback Rules. In spite of the fact that the petitioner had submitted all the necessary documents, for the sanction of the drawback amount, the respondent had issued the impugned communication, dated 6-12-2010, stating that the claim of the petitioner was incomplete and that it had been treated as ''Not Filed''.

10. The Learned Counsel had further submitted that, in the Deficiency Memo, dated 23-10-2009, issued by the respondent, the petitioner had been directed to produce the Non-availment of CENVAT Certificate/Declaration and the Bank Realization Certificate/Guarantee Remittance Waiver. However, both the said documents are not listed, in Rule 5(2) of the Drawback Rules. However, pursuant to the Deficiency Memo, dated 23-10-2009, issued by the respondent, the petitioner had obtained the Central Value Added Taxes Certificate from the jurisdictional Central Excise Commissioner ate and had submitted the same to the respondent, vide letter, dated 24-12-2009. Upon furnishing the Central Value Added Taxes Certificate, the respondent ought to have sanctioned the claim of Duty Drawback.

11. It had also been stated that the petitioner, vide its letter, dated 27-10-2010, had also produced the Back Realization Certificate showing the details of the

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payments received, even though such a certificate is not required for the claim of Duty drawback, for re-export, u/s 74 of the Customs Act, 1962, as per the order passed by this Court, dated 27-10-2009, made in W.P. No. 11752 of 2009, which had been confirmed by a Division Bench of this Court, in its order, dated 17-8-2010, made in W.A. No. 1505 of 2010, and in accordance with the decision of the High Court of Judicature at Bombay made in Commr. of Cus. Drawback Recovery Cell Vs. Phoenix Cement Ltd., . Therefore, the Drawback claim made by the petitioner ought to have been accepted by the respondent, without treating it as ''Not Filed'' for non-filing of the required documents.

12. Per contra, the Learned Counsel appearing on behalf of the respondent had submitted that the impugned communications, dated 6-12-2010, had been issued by the respondent, as the petitioner had failed to submit the required documents, in support of the drawback claim, within the period of limitation, as provided under the proviso to Rule 5(4)(b) of the Drawback Rules. Therefore, it would not be open to the petitioner to claim that the respondent ought to have accepted the drawback claim made by the petitioner. As such, the writ petitions, filed by the petitioner, are devoid of merits and therefore, they are liable to be dismissed.

13. In view of the submissions made by the Learned Counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, this Court finds it appropriate to set aside the impugned communications of the respondent, dated 6-12-2010, and to direct the respondent to accept the drawback claims, in respect of the export of the goods in question, under Shipping Bill Nos. 13131, 13132 and 13136.

14. From the decision of this Court, made in W.P. No. 11752 of 2009, dated 27-10-2009, which had been confirmed by a Division Bench of this Court, by its order, dated 17-8-2010, made in W.A. No. 1505 of 2010, and in view of the decision of the High Court of Judicature at Bombay, reported in Commr. of Cus. Drawback Recovery Cell Vs. Phoenix Cement Ltd., , it is clear that the Bank Realization Certificate may not be required for considering the claim of Duty Drawback, as prayed for by the petitioner.

15. It is seen that the petitioner had furnished the Non-availment of Central Value Added Taxes Certificate to the respondent, on 24-12-2009, and the Bank Realization Certificate on 27-10-2010, pursuant to the Deficiency Memo, dated 23-10-2009, issued by the respondent. It is not in dispute that the petitioner ought to have submitted the required documents, as per the Deficiency Memo, dated 23-10-2009, within 30 days of its receipt, by the petitioner. Even though the said memo is said to have been issued by the respondent, on 23-10-2009, nothing has been shown on behalf of the respondent, as to when it had been received by the petitioner.

16. In fact, the petitioner had stated that the Central Value Added Taxes Certificate had been submitted by the petitioner, to the respondent, as soon as it

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had been received from the authority concerned. It is also noted that the Bank Realization Certificate may not be needed for considering the claim of the petitioner, for Duty Drawback, as per the decision, made in W.P. No. 11752 of 2009, dated 27-10-2009, which had been confirmed by a Division Bench of this Court, by its order, dated 17-8-2010, made in W.A. No. 1505 of 2010, and in view of the decision of the High Court of Judicature at Bombay, reported in Commr. of Cus. Drawback Recovery Cell Vs. Phoenix Cement Ltd., As such, the claim of the respondent that the petitioner had not submitted the required documents, as per the Deficiency Memo, dated 23-10-2009, within the period stipulated, under Rule 5(4)(b) of the Drawback Rules, in respect of the Shipping Bill Nos. 13131, 13132 and 13136, cannot be accepted. In such circumstances, the petitioner is entitled for the grant of duty drawback, u/s 74 of the Customs Act, 1962. Accordingly, the respondent is directed to grant duty drawback, within a period of six weeks from the date of receipt of a copy of this order. The writ petition stands allowed. No costs.

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