(2010) 01 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 264 of 2009

Parmar Exports APPELLANT

Vs

Asstt. Commr. of Cus. (Drawback) RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Customs Act, 1962 — Section 75

Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 13, 16

Citation : (2010) 254 ELT 281

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : S. Jaikumar, for the Appellant; P. Mahadevan, SCGSC, for the Respondent

Judgement

V. Dhanapalan, J.—The order under challenge is passed by the Assistant Commissioner of Customs (Drawback), Chennai, wherein the

Drawback claims made by the petitioner for seven Shipping Bills were suspended till the clearance for release of drawback amount or any other

direction from the investigation agencies.

2. According to the petitioner, it is a partnership firm engaged in the export of Stainless Steel articles. The petitioner had filed 7 Shipping Bills for

claim of drawback for Rs. 9,86,263/- in terms of Customs, Central Excise Duties and Service Tax Draw Back Rules, 1995 read with Section 75

of the Customs Act, 1962. The respondent had kept the said drawback claim in abeyance without processing the same on the grounds that the

department had received a letter in F. No. INT/DGCEI/CHZU/88/2004 dated 6-10-2005 from the Directorate General of the Central Excise

Intelligence (DGCEI), Chennai stating that the petitioner had effected fictitious exports and had fraudulently claimed duty drawback running into

crores of rupees. As the subject drawback claims vis-a-vis the shipping bills were not the subject issue of the investigation, the petitioner had

requested the respondent to process the said drawback claim and sanction the amount. As no response was received by the petitioner from the

respondent, the petitioner had filed writ petitions before this Court in W.P. Nos. 5346 to 5352 of 2008. This Court, by an order dated 25-4-2008

directed the respondent to pass appropriate orders within a period of four (4) weeks from the date of receipt of a copy of the order.

2a. While so, the respondent passed an order-in-original No. 8056/2008 dated 18-8-2008, wherein the drawback claims for the above said

seven shipping bills were suspended till the clearance for release of drawback amount or any other direction from the investigation agencies.

Aggrieved by the said order, the petitioner is before this Court.

3. The respondent has filed counter affidavit stating that the petitioner is an exporter of Stainless Steel articles and had filed 7 Shipping Bills, which

were treated as original drawback claims. While processing the duty drawback claim submitted by the petitioner, the department had been alerted

by the DGCEI vide Letter No. FNO.INT/CHZU/88/2004 dated 6-10-2005 that the petitioner has been indulging in malpractices to obtain more

export incentive and thereby causing revenue loss to the Government exchequer.

3a. The respondent has further stated that malpractice cases are investigated by the Directorate General of Central Excise Intelligence (DGCEI),

Coimbatore and that while conducting investigation against the exporters of Stainless Steel utensils, they had noticed that the exporters have

effected fictitious exports and had fraudulently claimed duty drawback running into crores of rupees and they have adopted the same modus

operandi and had operated at different ports. Hence, the Directorate has directed the respondent office to keep pending the drawback claims filed

by some of the exporters, namely, M/s. Samy Metal Industries, M/s. Ayyappan Industries, M/s. J.S. Babu Inc and M/s. Parmer Exports, the

petitioner herein. Further, the Docks Intelligence Unit detected a Drawback offence during April, 2006 in the name of M/s. Sunitha Metal

Corporation & M/s. Ajay Exports, wherein, both the exporters admitted that they were only namesake exporters and the real owner of the companies was one Manish Jain, Proprietor of M/s. Parmer exports. Hence, the 7 Shipping Bills pertaining to the writ petitions referred to above

were kept pending to safeguard revenue. This was intimated to the exporter by raising query through online that ''Alert is pending''.

3b. It is also stated in the counter that since the petitioner holds that the drawback claim has no connection with the investigations that are being

carried out by the DGCEI, the petitioner could have obtained an NOC from DGCEI and produced the same to this Court.

4. Heard Mr. S. Jaikumar, learned Counsel for the petitioner and Mr. P. Mahadevan, learned Senior Central Government Standing Counsel

appearing for the respondent.

5. The foremost contention of the learned Counsel for the petitioner is that the investigations carried out by DGCEI is not connected to the

petitioner and the malpractices alleged to have been made by the petitioner are in no way connected to the bills claiming drawback. Therefore, the

impugned order is not in accordance with law and even the appeal remedy as communicated in the impugned order cannot be an effective remedy

to the petitioner.

6. On the other hand, learned Senior Central Government Standing Counsel appearing for the respondent would submit that the investigation by

the Docks Intelligence Unit, DGCEI is still under progress and report is awaited from the investigation agencies. Therefore, at this point of time, if

the drawback claim is admitted, then there may be loss to Government exchequer, which may prejudice the rights of the respondent. Learned

Counsel has also pointed out that in the impugned order itself, there is a clear indication that against the order impugned, an appeal would lie to the

Commissioner (Appeals), Custom House, Chennai within 60 days from the date of receipt of the order.

7. 1 have considered the submissions made by the learned Counsel on either side and perused the impugned order and the relevant materials

placed before this Court.

8. In this case, it is seen that the petitioner is a Partnership firm engaged in the export of Stainless Steel articles. In respect of 7 Shipping bills, the

petitioner made drawback claims and they have been rejected by the respondent stating that the Department had received a letter from the DGCEI on 6-10-2005, stating that the exporter had effected fictitious exports and had fraudulently claimed duty drawback running into crores of rupees.

In the impugned order, it is stated that all the seven claims were filed under Rule 13 of the Customs, Central Excise Duties and Service Tax

Drawback Rules, 1995 (hereinafter referred to as ''Rules'') that is, they have claimed Drawback under All Industry Rate specified in the Drawback

schedule. The eligibility of the Drawback claims are subject to the verification of Bank Realization Certificate issued by the Foreign Exchange

dealing Bank in favour of the exporter as per Rule 16 of the Rules.

9. It is understood from the impugned order that the petitioner has to submit the Bank Realisation Certificates for the drawback claim made in

respect of 7 Shipping Bills. Therefore, the appropriate authority to deal with the claim of the petitioner has to give consideration to the claim of the

petitioner after getting all the particulars from them. Though the claim of the petitioner is rejected by the respondent on the ground that investigation

is under progress, it has been intimated to the petitioner that an appeal would lie against the order impugned and if the petitioner is aggrieved, they

may prefer the same within 60 days from the date of receipt of a copy of the order.

10. In the counter affidavit, it is not clear as to whether the Intelligence Unit has completed the investigation and the report has been filed. But, it is

seen that the original authority has passed the impugned order pending investigation of the matter by the Docks Intelligence Unit. It is clearly stated

therein that the investigation by the Docks Intelligence Unit, DGCEI is still under progress and report is awaited from the investigation agencies. As

it is vividly mentioned in the impugned order that the eligibility of the Drawback claims are subject to the verification of Bank Realisation Certificate

issued by the Foreign Exchange dealing Bank in favour of the exporter as per Rule 16 of the Rules, the petitioner, in respect of his claim has to

satisfy the requirements of the Department by submitting the Bank realization Certificate for the drawback claims made in respect of 7 Shipping

Bills.

11. In the light of the above and considering the facts and circumstances of the case, this Court is of the view that the authority competent to look

into the grievance of the petitioner is the appellate authority and he shall look into the claim of the petitioner. When an appeal remedy is statutorily

provided, it is the obligation on the part of the petitioner to prefer such an appeal, before approaching this Court. Though the respondent has

indicated in his order itself that an appeal would lie against the order impugned, without exhausting the appeal remedy, the petitioner has challenged

the impugned proceedings before this Court. Therefore, when an alternative remedy is effectively and efficaciously available to the petitioner, it is

appropriate for them to exhaust such remedy as provided under the Rules.

12. Accordingly, the petitioner is directed to prefer an appeal to the appellate authority against the order impugned in this petition, within a period

of four (4) weeks from the date of receipt of a copy of this order and on receipt of the same, the appellate authority is directed to consider the

appeal in accordance with law and on merits and dispose of the same within a period of six (6) weeks. It is made clear that the time taken during

the pendency of the writ petition may be excluded, when the petitioner prefers an appeal.

The writ petition is disposed of with the above direction. No costs.