(2009) 04 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No''s. 30533-30535 of 2008 and M.P. No. 1 of 2008

Pen Foods Pvt. Ltd. APPELLANT

Vs

Asstt. Commr. of Cus. (Drawback), Chennai RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 128, 74
Re — Export of Imported Goods (Drawback of Customs Duties) Rules, 1995 — Rule 5

Citation : (2012) 275 ELT 44

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Joseph Prabakar, for the Appellant; Ravi Anantha Padmanabhan, for the Respondent

Final Decision : Dismissed

Judgement

Shri S. Nagamuthu, J.—Since common issues are involved in all these writ petitions, they were heard together and disposed of by way of

this common order.

2. In these writ petitions, the petitioner made separate claims for drawback u/s 74 of the Customs Act, in respect of certain goods which he

originally imported after paying necessary Customs duty and later on, exported without using the same as they were found to be defective. The

Assistant Commissioner (Drawback), has rejected all these claims on the ground that they were barred by limitation. Challenging the said orders,

the petitioner has come forward with these writ petitions.

3. The learned counsel for the petitioner would submit that u/s 74 of the Customs Act, the petitioner is entitled for the drawback on re-export of

the above duty paid. He would further submit that u/s 74 of the Customs Act, Re-export of Imported Goods (Drawback of Customs Duties)

Rules, 1995 has been issued and as per Rule 5, such claim should have been made within a period of three months from the date of clearance. In

this case, admittedly, the clearance was made on 4-2-2007 and claim was made on 19-2-2007. Therefore, according to the learned counsel,

rejection of the claims made by the petitioner as though the claims were barred by limitation is not correct. On this ground, the learned counsel

would request this Court to interfere with the impugned orders.

4. The learned counsel for the respondent would resist all these writ petitions. He would submit that though it is true that the claims were made on

19-2-2007, there were deficiencies in the claims made inasmuch as the clearance certificate from Bank (Bank Realisation Certificate) had not been

produced in all these cases. Such certificates were produced only after six months. Therefore, according to him, it should be treated that the claims

were made properly only on the production of the above certificates. On this ground, the claims of the petitioner were rejected, it is contended.

The learned counsel would further contend that in any view of the matter, the writ petitions are not maintainable since, the impugned order under

challenge are appealable u/s 128 of the Customs Act.

5. I have considered the rival submissions.

6. Since the question of maintainability of the writ petitions is raised by the learned counsel for the respondent, I deem it appropriate to decide the

said question first. A perusal of the impugned orders would go to show that the claims made by the petitioner were rejected by the respondent

under Rule 5 of the Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995. A perusal of Section 128 of the Customs Act,

would make it clear that the impugned orders are appealable. It is not as though the petitioner cannot raise all the grounds which are raised in these

writ petitions by way of appeal before the Appellate Authority u/s 128 of the Customs Act. In my considered opinion, such remedy u/s 128 of the

Customs Act, is not only alternative but also very efficacious.

7. At this stage, it should be mentioned that the power of this Court under Article 226 of the Constitution of India is of course very extensive, but

there are certain self-imposed restrictions by the Court of law while exercising such power. When an alternative and efficacious remedy is available

to the parties concerned, the writ Court could be reluctant to entertain the writ petition.

8. Applying the said principle to the facts of the present case, I am of the view that these writ petitions are not at all maintainable before this Court

as the petitioner can very well avail the remedy available u/s 128 of the Customs Act. Hence, the writ petitions are dismissed as not maintainable.

No costs. Consequently, connected miscellaneous are closed.

9. Since the writ petitions are dismissed on the ground of maintainability, I do not express any opinion regarding the grounds raised by the

petitioner in these writ petitions. However, the petitioner is given liberty to prefer appropriate appeals u/s 128 of the Customs Act, to the

authorities concerned within a period of 15 days from today and the same shall be construed to be made within the period of limitation. If any such

appeals are preferred, the Appellate Authority is directed to dispose of the same strictly in accordance with law within a period of six weeks

thereafter.