
(2004) 01 BOM CK 0098
In the Bombay High Court
Case No : Writ Petition No. 703 of 1993

Phil Corporation Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Customs Act, 1962 — Section 75

Customs and Central Excise Duties (Drawback) Rules, 1971 — Rule 15

Citation : (2004) 5 BomCR 788 : (2005) 101 ECC 439 : (2004) 168 ELT 24 :
(2004) 3 MhLj 936

Hon'ble Judges : V.C. Daga, J; J.P. Devadhar, J

Bench : Division Bench

Advocate : Manoj Sankhlecha and Vishakha Vaswani, instructed by V.V. Juris, for the Appellant; R.V. Desai, Senior Advocate and H.V. Mehta, instructed by T.C. Kaushik, for the Respondent

Judgement

J.P. Devadhar, J.—During the period from 20th October, 1989 to 7th April, 1990, the petitioners had exported 1029 "In-a-Snap Cameras" manufactured by them. Since the materials used in the manufacture of those cameras were imported and appropriate amount of customs duty was paid thereon, the petitioners as per Section 75 of the Customs Act read with Customs and Central Excise Drawback Rules, 1971, were entitled to claim drawback of duty paid on the materials used in the manufacture of the Cameras which were exported. Under the Drawback Rules, the rate of drawback for the respective item is specified,

2. Where the rate of drawback has not been determined on any article, then, under the Rules, the manufacturers or exporters of such articles were required to make an application to the Central Government under Rule 6 of the Drawback Rules seeking determination of the amount or rate of drawback with necessary particulars as more particularly set out therein. In respect of the products exported by the petitioners, the rate of drawback was not determined by the Central Government and, therefore, it was obligatory on the part of the petitioners to apply for drawback within the time stipulated under Rule 6 of the

Drawback Rules, It is an admitted fact that out of 1029 cameras, application seeking determination of rate of drawback in respect of 25 cameras was made within the period prescribed under Rule 6 of the Drawback Rules and in respect of the remaining cameras, the application seeking determination of the duty drawback was made beyond the period prescribed under Rule 6 of the Drawback Rules. However, on determination of the rate of drawback, the Customs authorities on 22-4-1991 granted drawback for a sum of Rs. 10,98,040/- for the entire quantity of exports effected by the petitioners. Thereafter, by a letter dated 29th April, 1991, the Customs authorities called upon the petitioners to explain as to why the drawback granted in respect of consignment for which applications were made beyond the period of limitation prescribed under Rule 6 should not be held to be time-barred and recover the same from the petitioners. The petitioners contended that the first application being in time and the rate being not determined by the Central Government, it was not necessary for the petitioners to file applications for the subsequent exports within the period prescribed under Rule 6 of the Drawback Rules.

3. By an order dated 6th December, 1991, the Customs authorities held that the drawback granted in respect of the cameras set out in the applications made by the petitioners which were beyond the period of limitation prescribed under Rule 6 of the Drawback Rules were time-barred and, therefore, the petitioners were liable to refund the amount of drawback granted on cameras for which the applications were made beyond time.

4. Thereafter, the petitioners on 18th January, 1992 made an application to the Central Government under Rule 15 of the Drawback Rules, 1971 seeking relaxation of conditions so that the legitimate claim for drawback is not denied on the technical ground that the application seeking determination of rate of drawback was not made in time. By an order dated 18th June, 1992 said application was rejected by the Customs authorities. Challenging the said order dated 18th June, 1992 as well as order dated 6th December, 1991 seeking refund of the drawback paid to petitioners and also the subsequent reminders issued by the Customs authorities, the present petition has been filed.

5. At the hearing of the present petition, Counsel for petitioners placed on record a letter dated 27-1-2004 addressed by the advocates for petitioners wherein it is stated that the petitioners restrict their claim in the petition to the rejection of the application made by the petitioners under Rule 15 of the Drawback Rules. Accordingly, the only issue required to be considered in the present case is, whether the Central Government was justified in rejecting the application made under Rule 15 of the Drawback Rules.

6. On perusal of the said order dated 18th June, 1992 rejecting the application of the petitioners requesting the Central Government to relax the conditions, it is seen that the said application has been rejected on the ground that the Ministry has been consistently following a policy of condoning the delay upto a period of 30 days (over and above 30 days period available for filing of brand rate

applications) under Rules 6 & 7 of the Drawback Rules. In other words, the Central Government has declined to exercise powers under Rule 15 because the conditions set out in Rule 6 of the Drawback Rules have not been complied with by the petitioners. Power is conferred upon the Central Government under Rule 15 to relax the conditions so that manufacturers or exporters who are unable to fulfill the conditions set out in any of the Drawback Rules including Rule 6 are not deprived of the duty drawback on account of non-fulfilment of the conditions. In other words, Rule 15 is a beneficial Rule made to protect the interests of the manufacturers or exporters. At the relevant time earning foreign exchange was very important and the Government with a view to boost exports decided to condone certain lapses so that manufacturers or exporters concentrate more on effecting exports rather than complying with the technical formalities in claiming duty drawback. It is pertinent to note that Rule 15 specifically provides that if the Central Government is satisfied in relation to any exports of goods that the exporter or his agents has for the reasons beyond his control failed to comply with any of the provisions of the said Rules and is entitled to drawback, then, it may after considering the lapse and for the reasons to be recorded in writing, exempt such exporter or agent from the provisions of the said Rules and allow drawback in spite of non-compliance of the conditions set out in those Rules. Thus, Rule 15 unequivocally empowers the Central Government to exempt or relax any of the conditions set out in any of the Rules including the conditions set out in Rule 6. In the present case, the application of the petitioners has been rejected only on the ground that the conditions set out in Rule 6 has not been complied with. The application under Rule 15 could be made to the Central Government only when the conditions could not be complied with by the exporter. In other words, Rule 15 comes into operation only when the conditions set out in other Rules could not be complied with by the exporters, Hence the Central Government could not have declined to exercise powers under Rule 15 merely on the ground that the conditions in Rule 6 is not complied with. The Central Government may or may not relax the conditions for the reasons to be recorded in writing, depending upon the facts of each case. However, the Central Government cannot decline to exercise its power under Rule 15, merely on the ground that the conditions set out in Rule 6 are not complied with.

7. Under the circumstances, the impugned order dated 18th June, 1992 is quashed and set aside. The respondents are directed to re-hear the application of the petitioners dated 18th January, 1992 on merits and pass appropriate orders in accordance with law, after giving a personal hearing to the petitioners.

8. It will be open to the petitioners to make additional representation if they choose to do so at the fresh hearing to be granted by the Central Government to the petitioners. The Central Government is directed to dispose of the application as expeditiously as possible, at any rate within a period of 6 months from the date of receipt of this order. Till the said application under Rule 15 is not heard and disposed of on merits, the respondents shall not enforce the order dated 6-12-1991 passed against the petitioners.

9. Petitioners undertake to keep the bank guarantee furnished by them pursuant to the interim orders of this Court alive till the communication of the order to be passed on the application of the petitioners under Rule 15 and for a further period of 2 months thereafter.

10. Petition is disposed of in the above terms with no order as to costs.