(2004) 01 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 1988 of 2003

Pradip Polyfils Pvt. Ltd. APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Citation : (2004) 2 BomCR 465 : (2004) 117 ECR 540 : (2004) 3 ELT 173

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

Bench : Division Bench

Advocate : Prakash Shah, instructed by D.S.K. Legal, for the Appellant; P.S. Jetly, instructed by T.C. Kaushik, for the Respondent

Final Decision : Allowed

Judgement

J.P. Devadhar, J.—Whether the petitioners are entitled to avail the benefit of duty entitlement pass book Scheme on export of Polypropylene filter plates and accessories is the question raised in this petition. The Customs Authorities have held that the benefit of the scheme is available to the goods which fall under Chapter 39 ITC (HS) classification and since the polypropylene filter plates and accessories do not fall under Chapter 39, the benefit of the scheme cannot be granted to the petitioners.

2. Duty Entitlement Pass Book (''DEPB'' for short) is an export incentive Scheme contained in Chapter 7 of the Import-Export Policy, 1992-1997. Under the said DEPB Scheme, the Government granted certain percentage of credit on the FOB value of exports made by an exporter as per the schedule of rates published by the Government. The said schedule is called DEPB schedule. The said schedule prescribes the rate granted for various goods under various heads. For availing the benefit under the DEPB scheme, DEPB licence and a pass book is issued by the Director General of Foreign Trade (''DGFT'' for short). DEPB credit which the exporter is entitled to is entered in the said pass book by the DGFT based on the rates indicated in the DEPB schedule, subject to verification of the documents. DEPB credit can be utilised for payment of customs duty on goods which are

imported into India. DEPB licence with the credit is also freely transferable.

3. During the period from 31st July, 1998 to 24th June, 1999 the petitioners had exported filter plates and accessories made of Polypropylene vide various shipping bills under DEPB Scheme through the Bombay Customs at Bombay. On the basis of application, two DEPB licences were issued by the D.G.F.T., Surat in respect of the aforesaid exports effected by the petitioners. On 25th October, 1999 the petitioners submitted the said DEPB licences to the Customs Authorities for verification. By a letter dated 2nd December, 1999, the Customs Authorities at Bombay rejected the claim of credit of duty on the ground that the goods exported did not fall under Chapter 39 of the ITC(HS) classification of export-import items which is a prerequisite for claiming of credit under serial No. 14 of public notice No. 6 dated 15/4/1998.

4. Serial No. 14 of public notice dated 15/4/1998 read as under:-

The said public notice was amended on 15/12/1999 and the amended item at Serial No. 14 read as under:-

The said public notice was further amended by another public notice dated 1/6/2000 wherein item at serial No. 14 read as follows:-

"14 Articles made solely of Polypropylene not elsewhere specified and covered under S. No. H-30 of SION."

Thus, as per the amended public notice, articles made solely of Polypropylene which are covered under Serial No. H-30 of Standard Input and Output Norms are entitled to avail the benefit of DEPB Scheme and there is no requirement that the goods must fall under Chapter 39 of the ITC classification.

5. The question to be considered in the present petition is, whether, in respect of export of articles of Polypropylene effected prior to the amendment of the public notice on 15/12/1999, the Customs authorities were justified in holding that the same being not covered under Chapter 39 of the ITC classification, the petitioners are not eligible for benefit under DEPB Scheme. It was contended on behalf of the petitioners that the application made by the petitioners seeking DEPB licence was in respect of Polypropylene filter plates and accessories. On consideration of the application, the Licensing Authority had issued DEPB licence with a view to enable the petitioners to avail the benefit of the Scheme in respect of the above goods. It was submitted that once the licensing authorities have held that the goods exported by the petitioners are eligible for the benefit of the DEPB Scheme, it is not open to the Customs authorities to sit in appeal against the order passed by the licensing authorities. The counsel for the petitioners brought to our notice a Circular No. 15/97 dated 13th June, 1997 issued by the Government of India, Ministry of Finance wherein it is held that in availing the benefit under DEPB Scheme, the role of the Customs Authorities is confined to verification of the correctness of the exporter declaration regarding the description, quantity and FOB value of the export product. It was submitted that

in the present case, no discrepancy in the description, quantity and FOB value of the export product is found by the Customs authorities and, therefore, it was not open to the Customs authorities to deny the benefit of the DEPB Scheme to the petitioners.

6. On behalf of the respondents, it was contended that the DEPB Licence issued to petitioners was subject to verification of the shipping bills by the Customs authorities and, therefore, if an item was not covered under Chapter 39 of ITC, which is one of the requirement under the public notice, it was open to the Customs authorities to reject the claim while verifying the documents. It was contended that in the present case, the amended provisions of the public notice dated 15/4/1998 were not relevant because the exports were made before the amendment to the Public Notice. It was submitted that as the conditions attached to item at Serial No. 14 of public notice dated 15/4/1998 were not fulfilled, the benefit of DEPB Scheme could not be extended to the petitioners. In other words, the submission was that since the product exported by the petitioners did not fall under Chapter 39 of ITC classification of Export and Import as stipulated in public notice dated 15/4/1998, the petitioners were not entitled to avail the benefit of DEPB Scheme.

7. We have heard Counsel on both the sides. In this case, it is not in dispute that pursuant to the application made by the petitioners seeking benefit of DEPB Scheme in respect of export of filter plates and accessories made of Polypropylene, two DEPB licences were issued by the DGFT in favour of the petitioners. The endorsement made on the licences clearly show that the DEPB licences have been issued against the export of Polypropylene filter Plates ad accessories as contained in the shipping bills furnished by the petitioners. The said DEPB licences were required to be forwarded to the Customs for verification of the particulars set out in the shipping bills and necessary endorsement thereon. Under Circular No. 15/97 dated 3/6/1997 the verification by the Customs authorities was restricted to the description, quantity and FOB value of the export product set out in the Shipping Bill. It is not the case of the Customs authorities that there is any discrepancy in the description, quantity and FOB value of the export product. Under the circumstances, when the DEPB licence is issued by the Licensing authorities specifically holding that the Petitioners are entitled to avail the benefit of the DEPB Scheme in respect of Polypropylene filter plates and accessories, the Customs authorities were not justified in rejecting the claim of the Petitioners on the ground that the Articles exported by the Petitioners were not covered under Chapter 39 ITC (HS) classification. Whether an item falls under Chapter 39 of ITC classification or not is for the licensing authorities to consider before issuing the licence. Even after the issuance of the licences, the licensing authorities have not taken any steps to declare that the said licences were wrongly issued. Once the licensing authorities have held that the export product is covered under the DEPB Scheme and have issued the DEPB licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme and have issued the DEPB

licence, it is not open to the Customs authorities to hold that the said export product is not covered under the DEPB Scheme.

8. In this view of the matter, the petition succeeds. The order of the Customs authorities contained in the letter dated 2nd December, 1999 (Exhibit ''H'' to the petition) is quashed and set aside. Rule is made absolute in terms of prayer Clause (a). However, in the facts and circumstances of the case, there will be no order as to costs.

