(1979) 11 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No. 2218 of 1977-L

Premier Tyres Ltd. APPELLANT

Vs

Assistant Collector and Others RESPONDENT

Date of Decision : 30-11-1979

Acts Referred:

Customs Act, 1962 — Section 75, 75(1), 75(2)
Customs and Central Excise Duties (Drawback) Rules, 1971 — Rule 2, 3

Citation : (1980) 6 ELT 161 : (1980) 2 ILR (Ker) 53

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : K.V. Shenoy, K.A. Nayar and J.B. Koshy, for the Appellant; T.R.G. Warrier, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—The petitioner is a manufacturer of, among other things, tubes and flaps. In respect of those goods manufactured and exported by them, the petitioner claimed drawback as per the provisions of the Customs Act, 1972 (''the Act'') read with Customs and Central Excise Duties Drawback Rules, 1971 (''the Rules'') and Ext. P1 public notice dated 5th June 1972 prescribing rates of drawbacks. The Assistant Collector of Customs by Exts. P3 and P4 held that the petitioner was not entitled to any drawback they manufactured tubes and flaps out of natural rubber which was not dutiable under the Act or the Rules. According the officer, no drawback was payable on non dutiable goods or dutiable goods on which duty had not been paid. The decision of the Assistant Collector was set aside in appeal by the Appellate Collector of Customs by Ext. P7. Ext P7 was taken up in suo motu revision by the Central Government which by Ext. P8 order held that natural rubber out of which the petitioner''s goods were manufactured was not dutiable and no drawback was therefore, payable to the petitioner for such goods. However in respect of goods manufactured and exported by the petitioner in which certain dutiable ingredients had been used and on which duty had been paid, the Assistant Collector was directed to consider those specific cases afresh and pass suitable orders.

2. The petitioner challenges Exts. P3, P4 and P10 on the ground that, whether or not the articles manufactured and exported contained ingredients which were chargeable to duty, the petitioner was entitled to drawback as per the rates mentioned for the relevant items of Ext. P1.

3. Ext. P1 mentions items 4 and 6 which respectively are tubes and flaps. For them the drawback prescribed are :

4. Based on the rates in Ext. P1, the petitioner''s counsel Sri K.A. Nayar submits that the prescribed drawback is payable to the petitioner in respect of all tubes and flaps manufactured and exported by them, whether or not they contained ingredients chargeable to duty. Counsel submits that in so far as Ext. P1 prescribes rates generally for tubes and flaps, all such items when exported attracted drawback.

5. Section 75 of the Act reads as follows :

"75. (1) Where it appears to the Central Government that in respect to goods of any class or description manufactured in India and exported to any place outside India, a drawback should be allowed of duties of customs changeable under this Act on any imported material of a class or description used in the manufacture of such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with and subject to, the rules made under Sub-section"(2).

* * *

(2) The Central Government may make rules for the purpose of carrying out the provisions of Sub-section (1), and, in particular, such rules may provide-

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture of the goods or as is specified in the rules as the average, amount of duty paid on the materials of that class or description used in the manufacture of export goods of that class or description either by manufacturers generally or by any particular manufacturer;

(b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;

(c) for requiring the manufacturer to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Collector of Customs to enable such authorised officer to inspect "the processes of manufacture and to verify by actual check or otherwise the statements made in support of the claim for drawback."

Rule 2 defines "drawback" :

"drawback" in relation to any goods manufactured in India and exported means-

(i) the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India; or

(ii) the rebate of duty of excise chargeable under the Central Excises and Salt Act, 1944 (1 of 1944); on the goods specified in Sch. 1;"

Rule 3 reads as follows :

"3. Drawback-(1) Subject to the provisions of-

(a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder,

(b) the Central Excises and Salt Act, 1944 (1 of 1944) and the roles made thereunder, and (c) these rules,

a drawback may be allowed on the export of goods specified in Sch. II at such amount, or at such rates, as may be determined by the Central Government:

Provided that where any goods are produced or manufactured from imported materials or excisable materials, on some of which only duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid, or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder or of the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained :

Provided further that no drawback shall be allowed-

(i) if the said goods have been taken into use after manufacture; or

(ii) if the said goods are produced or manufactured using imported materials or excisable materials in respect of which duties have not been paid."

6. Section 75 and the rules read together show that if the exported goods had been manufactured out of articles chargeable to duty and on which duty had been paid the whole of such duty, or such sum as specified under the Rules as the average amount of duty paid, shall be repayable to the exporter by way of drawback. In the present case the tubes and flaps manufactured and exported by the petitioner had been admittedly manufactured out of natural rubber on which no duty was payable at the relevant time. Is the circumstances the statutory provisions concerning drawback are not attracted by such goods. That being the position, the Customs authorities have correctly held that the rates specified under Ext. P1 are not applicable to the petitioner''s goods (except in so far as such specified cases as referred to in the last paragraph of Ext. P 10).

This Original Petition is accordingly dismissed. No costs.

