**(2016) 01 P&H CK 0315**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP No. 492 of 2016

Regular Traders APPELLANT

Vs

Union of India and Others RESPONDENT

**Date of Decision :** 12-01-2016

**Acts Referred:**
Constitution of India, 1950 — Article 226, Article 227

**Citation :** (2016) 01 P&H CK 0315

**Hon'ble Judges :** Ajay Kumar Mittal and Raj Rahul Garg, JJ.

**Bench :** Division Bench

**Advocate :** Jagmohan Bansal, Advocate, for the Appellant;

**Final Decision :** Disposed Off

## Judgement

Ajay Kumar Mittal, J.—1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to immediately release drawback to it.

2. The petitioner is engaged in the manufacture and export of textile articles and during the year 1997-98 exported articles of hosiery claiming benefit of DEPB-cum-Drawback. Respondent No. 3 released benefit of DEPB but respondent No. 4 has not released benefit of drawback till date. Vide circular dated 2.12.1997 (Annexure P-1), the Central Board of Excise and Customs (in short "the Board") held that an exporter would be entitled to benefit of DEPB as well as brand rate drawbacks but not at industry drawback rates. Further, the Board vide circular dated 25.6.1999 (Annexure P-2) provided that the benefit of the circular, Annexure P-1, would be available in the cases where the goods exported are liable to levy of excise duty. Thereafter, the Board modified the circulars, Annexures P-1 and P-2, respectively, vide circular dated 6.7.2001 (Annexure P-3) to the effect that the benefit of brand rate drawback would be available only if excise duty is paid on business inputs not specified in relevant SION and no MODVAT (Cenvat) has been availed. Being aggrieved by the said circular,

 

Annexure P-3, various exporters filed writ petitions before different High Courts and the Bombay High Court in M/s. Arviva Industries''s case had held that the said circular was prospective in nature and would not be applicable to earlier cases. Similar view was expressed by the Gujarat High Court. The said view of both the High Courts was upheld by the Supreme Court vide order dated 10.1.2007 (Annexure P-4). The Board wrote a letter dated 23.3.2009 (Annexure P-5) to the Commissioner of Central Excise, Bombay to fix the brand rates at the earliest. The Board vide letter dated 10.3.2011 (Annexure P-5/A) intimated respondent No. 4 about the receipt of representation from the petitioner regarding difficulties in getting drawback claims. Respondent No. 2 vide letter dated 7.7.2014 (Annexure P-6) informed the drawback section of CBEC that 54 claim applications duly verified by the Central Excise staff were received and the office had issued brand rates in two claim applications. The Drawback Division of CBEC vide its letter dated 28.5.2015 (Annexure P-7) informed respondent No. 2 about 60 claim applications of the petitioner and forwarded the same for further necessary action. Respondent No. 2 vide letter dated 4.6.2015 (Annexure P-8) intimated the order of the Ministry of Finance regarding extension of benefit of judgment dated 20.4.2007 (Annexure P-4) passed by the Supreme Court. The Board vide letter dated 18.6.2015 (Annexure P-9) transferred 60 applications of the petitioner to respondent No. 2 for processing in view of judgment of the Apex Court dated 20.4.2007. Respondent No. 2 vide letter dated 3.7.2015 (Annexure P-10) informed the petitioner that their claim had been examined and drawback rates on the export of goods manufactured by them were allowed. Further, respondent No. 2 vide letter dated 8.7.2015 (Annexure P-11) informed the Ministry regarding fixation of brand rates of 60 claims of the petitioner. The petitioner vide letter dated 8.7.2015 (Annexure P-12) requested respondent No. 4 for registration of its drawback claim who vide letter dated 8.7.2015 (Annexure P-13) asked respondent No. 3 for certification of the genuineness of the signatures on DEPB-cum-Drawback Shipping Bills. Respondent No. 3 vide letter dated 22.7.2015 (Annexure P-14) informed respondent No. 4 that the attestation could not be verified as the record pertaining to the year 1997-98 had been weeded out and that Shri R.L. Meena, Foreign Trade Development Officer was posted in their office from 10.8.2004 to 8.11.2013. Respondent No. 4 vide letter dated 29.7.2015 (Annexure P-15) asked respondent No. 3 for the present place of posting of Shri R.L. Meena who vide letter dated 7.8.2015 (Annexure P-16) informed respondent No. 4 that the genuineness of the documents be verified at their end as the documents were issued by them. Shri R.L. Meena vide letter dated 18.8.2015 (Annexure P-17) confirmed the signatures on DEPB-cum-Drawback Shipping Bills. Respondent No. 4 vide letter dated 8.7.2015 (Annexure P-18) asked the Manager, Allahabad Bank, Ludhiana to certify genuineness of the signature of BRC attested/issued by them who vide letter dated 27.7.2015 (Annexure P-19) informed that the bank realization certificates were not traceable as they did not maintain the record beyond 10 years. Respondent No. 4 vide letters dated 3.9.2015 and 18.9.2015 (Annexure P-20 Colly) asked the banker to verify the genuineness and authenticity of copies of banker realization certificates attested by their staff who vide letter dated 19.9.2015 (Annexure P-21) showed their inability as the record prior to 10 years was not available. Further, the banker vide letter dated 25.9.2015 (Annexure P-22) informed respondent No. 4 that they had received a letter from Shri Surinder Kumar, the then Senior Manager who has gone through all the 14 bank realization certificates and had confirmed that he had not signed and verified any bank realization certificate. Again respondent No. 4 vide letter dated 28.10.2015 (Annexure P-23) asked the banker to confirm regarding the receipt of payment qua 14 bank realization certificates who vide letter dated 31.10.2015 (Annexure P-24) informed that BRCs relate to the period more than 16 years back and it was not possible for them to verify as they did not maintain record beyond 10 years. Thereafter, respondent No. 4 vide letter dated 19.11.2015 (Annexure P-25) asked the banker to supply the information mentioned therein who vide letter dated 14.12.2015 (Annexure P-25/A) informed that verification of BRC was not possible. Again respondent No. 4 vide letter dated 15.12.2015 (Annexure P-26) asked the banker that they had attested the BRC or not. The petitioner vide letter dated 27.7.2015 (Annexure P-27) requested the Board to look into the matter and to direct the concerned office to expedite the process of sanctioning of brand rates as the matter relates to the financial year 1997-98. The Board vide letter dated 3.8.2015 (Annexure P-28) asked respondent No. 4 to decide the claim of the petitioner in view of Ministry letter No. 606/20/2011. Again the petitioner sent a letter dated 25.8.2015 (Annexure P-29) for sanctioning of drawback and the Board vide letter dated 1.9.2015 (Annexure P-30) directed respondent No. 4 to dispose of the claim of the petitioner at the earliest. Again the petitioner vide letter dated 2.10.2015 (Annexure P-31) made a similar prayer and respondent No. 4 vide letter dated 9.10.2015 (Annexure P-32) directed respondent No. 4 to dispose of the claims at the earliest. Thereafter, respondent No. 4 vide letter dated 18.11.2015 (Annexure P-33) asked the petitioner to prove that the foreign remittances were received in their account and to submit bank statement, DEPB licence, original BRC or any other document to prove receipt of foreign exchange. The petitioner informed about the attestation of shipping bills on the basis of documents and original BRC vide letter dated 14.12.2015 (Annexure P-34) and again vide letter dated 29.12.2015 (Annexure P-35), the petitioner pointed out respondent No. 4 regarding submission of documents with DGFT at the time of taking DEPB licence. The Board vide letters dated 10.9.2008 (Annexure P-36) and dated 7.4.2009 (Annexure P-37) ordered for disbursement of drawback at the earliest, but to no effect. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent various letters including letters dated 14.12.2015 (Annexure P-34) and dated 23.12.2015 (Annexure P-35) to respondent No. 4, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, the present writ petition is disposed of by directing respondent No. 4 to take a decision on the letters dated 14.12.2015 (Annexure P-34) and dated 23.12.2015 (Annexure P-35), in

accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of a certified copy of this order.