

(2015) 01 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 6044 (W) of 2014

Schefields International Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Customs Act, 1962 — Section 122, 122A, 122A(2), 129DD, 75

Citation : (2015) 2 CHN 598 : (2015) 317 ELT 209 : (2015) 52 GST 543

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Kallol Kumar Basu, for the Appellant; S.B. Saraf and K.K. Maiti, Advocates for the Respondent

Judgement

Sanjib Banerjee, J.—This petition is utterly unmeritorious and in abuse of the process. The petitioner exported a consignment of ball pens; claimed duty drawback thereon, was afforded the concession; but, the foreign buyer did not ultimately make payment in respect of the consignment. The petitioner covered a substantial part of the export loss since the foreign transaction was guaranteed for payment by the Export Credit Guarantee Corporation.

2. Upon the Customs authorities discovering that the export consignment on which duty drawback was claimed by the petitioner had not been paid for by the foreign buyer, the duty drawback was sought to be rolled back. The petitioner protested before the assessing authority and failed. Surprisingly, the petitioner's appeal succeeded. The department carried the appellate order by way of a revision and the revisional authority, being a Joint Secretary to the Union Government, set aside the appellate order and restored the order of the assessing officer.

3. Two grounds have been canvassed on behalf of the petitioner that in view of Section 122A(2) of the Customs Act, 1962 the revisional authority was obliged to grant the adjournment that the petitioner had sought since the petitioner was entitled to at least three adjournments in course of the proceedings; and, that

upon the payment due from the foreign buyer being substantially recovered by the petitioner from ECGC, there was no question of the duty drawback being disallowed.

4. In support of the second ground canvassed, clause 2.25.1 of the Handbook of Procedures for the period 2009-2014 is referred to. The relevant provision provides that payment through ECGC cover would count for benefits under the foreign trade policy.

5. The revision was filed by the petitioner under Section 129DD of the said Act before the appropriate officer of the Central Government notified in such regard. Section 122A of the said Act pertains to adjudication proceedings conducted under Section 122 of the said Act and it does not appear that Section 122A applies at all to any revision under Section 129DD of the said Act. Even if it were to be accepted that the refusal of a prayer for adjournment, as is the typical habit of an undeserving suitor, ought to have been granted; it must be appreciated that for the violation of natural justice as complained of to be material, it has to be demonstrated that the breach resulted in manifest prejudice.

6. The once unguided principle of natural justice has been substantially refined and it is no longer good enough for a person to allege that an adjournment was not granted or a report was not forwarded or a notice was not issued without the complainant demonstrating the prejudice suffered as a consequence of the perceived breach of natural justice.

7. In the present case, once it is inescapable that despite the petitioner's participation before the revisional authority, no other result could have followed, the complaint of breach of natural justice in declining the adjournment sought is of no merit.

8. The provision relied on from the Handbook of Procedures does not expressly apply to duty drawback. Indeed, duty drawback is covered by Section 75 of the said Act. The second proviso to sub-section (1) of Section 75 of the said Act clearly stipulates that when the payment for an export transaction is not received within the time permitted by the Indian exporter, the drawback would be deemed to never have been allowed unless exceptions are made by rules by the Central Government. The petitioner can cite no exceptions in this case.

9. In any event, the fundamental premise of the petitioner is completely flawed. It does not stand to reason that an exporter whose export transaction has not been paid for by the foreign buyer would jeopardise the Central Government twice over in not only availing of the cover provided by ECGC, which is a government organisation, but also seeking the benefits of the duty drawback under Section 75 of the said Act despite the failed export transaction. The basis for allowing duty drawback is that the economy would gain in the export transaction that would have been completed by the importer who has used some imported components for ultimately manufacturing the goods that are sought to

be exported. When the export transaction fails in the sense that there is no accrual of foreign exchange from the overseas buyer, there can be no duty drawback that can be claimed by the exporter unless there is a specific exemption stipulated in any rules made by the Central Government.

10. WP 6044 (W) of 2014 is dismissed with costs assessed at Rs. 20,000/-. Certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.