

(2016) 07 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No. 255 of 2008 with C.A. No. 569 of 2008 and C.A. No. 570 of 2008

Surinder Singh (Dead)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Citation : (2016) 340 ELT 97 : (2016) 8 Scale 51

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Mr. Praveen Agrawal, Advocate, Mr. K. Radhakrishnan, Senior Advocate, Mr. Rupesh Kumar, Ms. Rashmi Malhotra, Mr. T.M. Singh, Mr. B. Krishna Prasad and Ms. Meenakshi Arora, Advocates, for the Appellant

Final Decision : Allowed

Judgement

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1. Abatement is set aside. Delay in filing the substitution application is condoned. Substitution application for bringing on record the legal representatives of deceased appellant is allowed.

2. The appellant herein was the sole proprietor of M/s. Rangi International and is carrying on the business of manufacture and export of readymade garments. During the period 1991-1993, the appellant exported garments to M/s. Pinky Originals Inc. and M/s. Indo American Design Workshop Inc., USA, valued at Rs. 45.75 crores, in respect of which the appellant was allowed duty drawback. However, the appellant was not able to realise export proceeds to the extent of Rs. 11.73 crores since the foreign buyers were declared bankrupt. Consequently, the appellant applied to the Reserve Bank of India (RBI) to write off the amount as there was no possibility of realising the aforementioned export proceeds. The RBI granted permission to the appellant subject to certain terms, which the appellant claims to have complied with.

3. By notice dated 17.11.1997, the customs authorities in Delhi (Air Cargo Unit) required the appellant to surrender/repay the duty drawback allowed earlier to the extent of the amount of sale proceeds not realised. The said notice was duly replied.

4. After receiving the reply of the appellant, the Assistant Commissioner of Customs by an order dated 01.07.1998 confirmed the demand of Rs. 99,69,684/- towards principal, along with interest at the rate of 24% per annum amounting to Rs. 71,73,851, aggregating to Rs. 1,71,37,545/-. It is not in dispute that the interest component has been worked out at 24% per annum for a three-year period between 26.05.1995 and 26.05.1998.

5. The said order dated 01.07.1998 was challenged by the appellant by way of a writ petition before the High Court contending that the order of the Assistant Collector of Customs was entirely without jurisdiction. It was also contended that since the Customs and Central Excise Duties Drawback Rules, 1995 (Duty Drawback Rules 1995) were not retrospective, the demand for refund of the duty drawback made in exercise of Rule 16A thereof was unsustainable in law. The said writ petition was dismissed on 07.08.1998 with the liberty to raise the issue before the Appellate Authority.

6. Pursuant to order dated 07.08.1998, the appellant raised the said plea before the Appellate Authority. Before the Appellate Authority, the appellant raised the issue that Rule 16A of the Duty Drawback Rules 1995 was not retrospective. The appeal was dismissed vide order dated 21.09.1998 and the contention of the appellant that Rule 16A of the Duty Drawback Rules 1995 was not retrospective was rejected. It was further held that Rule 16A has to be harmoniously construed with the provisions of Section 75 of Customs Act, 1962, and therefore, recoveries can be effected in respect of exports made earlier and where foreign exchange has not been realized. It was further held that the drawback was not limited to customs duty but included duty on excisable goods as well.

7. As a consequence, the appellant deposited the entire sum of drawback with interest.

8. Being aggrieved by the order dated 21.09.1998, the appellant filed a revision petition which was disposed of vide order dated 11.06.1999 relying upon the decisions of this Court in the case of "Cannanore Spinning & Weaving Mills Ltd. v. Collector of Customs and Central Excise" [AIR 1970 SC 1950] and "Amba Lal v. Union of India" [AIR 1961 SC 264]. It was held that Rule 16A of the Duty Drawback Rules 1995 could not be retrospective and that all payments made towards the Central Excise component of drawback before 06.12.1995 cannot be recovered even though the export proceeds have not been realized. Consequently, the orders passed by the lower authorities were set aside.

9. Aggrieved, Department challenged the said order before this Court by way of Civil Appeal No. 3743 of 2003. On 21.02.2003, the said Appeal was dismissed on grounds that there was no satisfactory explanation for delay in filing the appeal.

While dismissing the appeal, leave earlier granted was revoked.

10. Pursuant to the dismissal of the civil appeal, the appellant wrote a letter to the Department on 30.05.2003 seeking refund.

11. On 16.06.2003, the Assistant Commissioner of Customs (Refund) rejected the claim for refund of the drawback recovered from the appellant to the extent of its customs component of Rs. 46,06,890/-. The appellant's claim for interest at 24% on the entire amount of the drawback recovered from the appellant was also rejected.

12. Being aggrieved, the appellant filed writ petition challenging the order dated 16.06.2003. The High Court vide its impugned judgment and final order dated 18.11.2006 partly allowed the writ petition and held that the appellants claim for refund of the customs component of the drawback together with interest is rejected and the appellant is directed to be paid interest for the delayed refund of the excise duty component at the rate of 12% per annum on the Central Excise duty component of the drawback together with interest recovered from him, for the period 11.06.1999 to 12.06.2003 after adjusting the amount already paid to him. It was observed by the High Court that prior to the Duty Drawback Rules, 1995, there was no provision either in the Central Excise Act, 1944 or in the Duty Drawback Rules, 1971 which stipulated that if the export proceeds were not recovered, then the corresponding excise duty drawback would become refundable by the exporter.

13. Section 37 of the Central Excise Act, 1944 is a general provision encapsulating the rule making power of the Central Government and nothing more. Rule 14 of the Duty Drawback Rules, 1971, only provided for repayment of erroneous or excess payment of drawback and clearly that provision could not be pressed into service in a situation where the export proceeds were not realised. Such a provision was introduced in the context of excise duty for the first time only by way of Rule 16A of the Duty Drawback Rules, 1995, with effect from 06.12.1995. The High Court observed that there being no corresponding earlier substantive provision in the Central Excise Act, 1944, Rule 16A could obviously not be made retrospective to apply even to those exports, like those in the instant case, which were made prior to 06.12.1995. Therefore, in this respect, the High Court was in complete agreement with the order dated 11.06.1999 passed by the Central Government in the appellant's revision petition. The said order has attained finality with the dismissal of the Civil Appeal filed by the Government. It was further held that the order dated 12.06.2003 passed by the authorities has also rightly directed the refund to the appellant of the excise component of the drawback as well as the interest charged thereon. It was further held that although the above substantive provision was introduced by the Finance Act, 1991, with effect from 27.12.1991, there is no corresponding provision in the Duty Drawback Rules, 1971. The Department would, therefore, have to fall back on Section 142(1) of the Customs Act, 1962, which prescribes the procedure for recovery of sums due to Government. When, ultimately, Rule

16A was introduced, it was only consistent with the existing provisions in the Customs Act, 1962, for recovery of drawback where export proceeds were not realised. In other words, when Rule 16A was introduced in the Duty Drawback Rules, 1995, no new provision was being introduced substantively for the first time concerning the customs duty component whereas it was as far the excise duty component was concerned.

14. Hence the instant civil appeal.

15. After hearing learned counsel for the parties, we are of the opinion that the impugned order passed by the High Court does not suffer from any infirmity and, therefore, no interference therein is called for. Suffice is to point out that the effect of Section 75 of the Customs Act, 1962, is that in case value/price of the goods exported is not received, it is to be presumed as if no drawback was ever allowed and in that view of the matter, the duty drawback which was taken by the appellant had to be refunded. That would be the position even de hors Rule 16A of the Duty Drawback Rules, 1995. Therefore, we are inclined to agree that Rule 16A is a clarificatory provision clarifying the position of law which already exists in the form of Section 75 of the Customs Act, 1962, and therefore, will have retrospective effect. The appeal is, accordingly, dismissed.

16. At this stage, learned counsel for the appellants submits that on the central excise duty component of the drawback where the High Court had directed the Government to refund the said amount along with 12% Simple Interest, though the said amount is refunded but the interest component has not been released to the appellant till date. If that be so, then the amount of interest shall be released in favour of the appellants within three months.

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17. In view of our orders passed hereinabove in Civil Appeal No. 255 of 2008, these appeals of Union of India are allowed.