**(1997) 12 CAL CK 0004**

**In the Calcutta High Court**

**Case No :** Writ Petition No''s. 937, 939, 956, 957, 1269 of 1997

Terai Overseas Ltd. APPELLANT

Vs

The O.S., Draw Back Deptt. and Others RESPONDENT

**Date of Decision :** 19-12-1997

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

**Citation :** (1998) 59 ECC 252

**Hon'ble Judges :** Vinod Kumar Gupta, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Vinod Kumar Gupta, J.—A very short question is involved for consideration and adjudication in this petition filed under Article 226 of the Constitution of India by the petitioner. The petitioner which is a company incorporated under the Companies Act, 1956 claims that it exported certain goods and that as a result of such export of the goods, the petitioner is entitled to claim benefit of the draw-back customs duty in accordance with and on the basis of the Customs and Central Excise Duties Draw Back Rules, 1995 (thereafter referred to as "1995 Rules"). The details of the exports made by the petitioner are contained in various paragraphs of this petition but since I do not propose to go into any question relating to the aspect of the export as such, there is no need to refer to those details. The petitioner''s grievance is that despite having exported the goods, and despite being entitled to claim and get the draw-back customs duty under 1995 Rules, the respondents are not acting in accordance with this Rules and because of their failure to discharge their statutory obligation, the petitioner is being deprived of the benefit which it claims it is entitled to receive under the 1995 Rules.

2. The petitioner has approached this Court for a two fold relief, firstly for the issuance of a writ in the nature of Mandamus for directions upon the respondents to act and to proceed in accordance with the 1995 Rules and to process the claim

of the petitioner and secondly, for directions to produce the original triplicate copies of the Shipping Bills for verification. The need for the petitioner to ask for the production of the original triplicate copies of the Shipping Bills arose because of a requirement contained in Rule 13 of the 1995 Rules whereby the petitioner was obliged to file every application for drawback duty which, inter alia, was required to be supported with the original triplicate set of the Shipping Bills relating to the export made by the petitioner. It is the admitted case of the parties that the original triplicate set of the Shipping Bills is not in possession of the petitioner and that these documents are in possession of the Director of Revenue Intelligence since these were seized by the officials of this Directorate in the course of search and seizure operations carried out in the premises of the petitioner-company. The petitioner''s submission is that in course of such search and seizure operations, the original triplicate set of the documents lying with the petitioner were seized by the officials of DRI but another set of such original documents which were meant for use by the Customs Authorities are lying in the possession of the Customs Authorities. Be that as it may, because of the fact that the petitioner is not possessed of the original triplicate set of the Shipping Bills, it then made prayer that these original documents be produced in the Court by the respondents; hence the need to issue direction upon them.

3. On 19th June, 1997 this Court passed an interim order permitting the petitioner to submit applications under 1995 Rules supported by the xerox copies of the Shipping Bills so as to meet the deadline prescribed for submission of such applications.

4. The respondent''s contention is that the petitioner has not filed proper application because the application filed by the petitioner under Rule 13 was required to be supported by the original triplicate set of the Shipping Bills. The respondents also contended that they had started investigation about the nature of the exports made by the petitioner but such investigation at present is stayed in view of the order dated 25.7.97 passed by the Hon''ble Supreme Court. It is the contention of the respondents that the investigation related to over invoiced and misdeclared exports of garments to Russia by the petitioner and that it revealed that the petitioner had exported running pair shoe, cloth hangers, rags etc. in place of ready made garments in order to claim drawback. The investigation has still not been completed.

5. Mr. Ghosh, however, appearing for the petitioner contends that in respect of the exports which form the subject matter of this petition no investigation is pending.

6. Whether under 1995 Rules the petitioner is entitled to file an application for claiming the duty of draw back is one question. Whether under 1995 Rules the petitioner is entitled to claim and receive the duty of draw back in respect of the exports made by him is the other question. Both these questions undoubtedly have to be decided by the competent Authority under 1995 Rules in accordance with the manner prescribed in the Rules itself and on the basis of the

 

examination of the claims of the petitioner. If the authority finds that the petitioner has not filed an appropriate or proper application or that the application is not maintainable, and if the law permits them to reject such application, it shall be open to the authority to do so. If also, the authority finds that even though the application has properly been filed by the petitioner and is also supported with requisite documents or copies thereof, it shall be open to it to examine the merits of the petitioner''s claims and to decide whether or not the petitioner is, in fact, entitled to claim and receive the duty of drawback in respect of the export stated to have been made by it. It shall be entirely upto and for the authority while deciding such question to take into consideration all relevant factors, including the factors relating to the search and seizure, rides, the nature of the exports made by the petitioner and other incidental matter, if these are applicable to the facts of the petitioner''s case and if the law permits the authority to take these factors into consideration. All such issues are within the domain of the prescribed authority under the 1995 Rules and this Court has no intention whatsoever to go in any such question or to express any opinion with regard thereto.

7. The only concern of this Court in this petition is about the right of the petitioner to claim consideration of his application. This Court undoubtedly is convinced that the petitioner has such a right. This right flows from the fact of the petitioner having made exports, as claimed by it. If a party says that it was made export, it is entitled to file an application for considering his claim for draw back duty. Whether it is actually entitled for such claim or not is altogether a different, separate and independent issue, If the party says that it has made exports, the 1995 Rules permit such a party to file an application for claiming that it is entitled to get draw back duty. That is the limited right which I am saying the party possesses. It is entirely upto the prescribed authority, upon receiving the application, to decide whether the party is entitled to get draw back duty or not. The right however to file and maintain application correspondingly gives rise to an obligation to consider the application upon its merits and to deal with it under law. Such claim of the petitioner about the exports and about the claim for drawback duty is surely and certainly subject to examination by the respondents. The mere filing of the application therefore does not by itself give rise to any presumption that the party is entitled to receive the duty of draw back. The filing of application is only a request for consideration of the claim. If the claim is genuine, based on merit, in accordance with law and does not suffer from any ineligibility, the prescribed authority is to dispose of the application based on such relevant factors as aforesaid and other considerations as are permissible under law. If the claim is barred, if it is not maintainable, if it is de horse the provisions of law or if it is vitiated by any fraud or legal mischief etc., the application is always liable to be rejected. The fact still remains that the right to file and maintain application is there; the obligation correspondingly to consider the application is also there.

8. The other related aspect is about the application under Rule 13 not being

 

accompanied by the original triplicate set of the Shipping Bills. Since admittedly the petitioner was not in possession of the original set of the Bills because these had been seized by the respondents during search and seizure operation and since within the time prescribed for filing the application, these documents were not returned by the respondents to the petitioner, the petitioner was handicapped in the sense that he could not support his application with the original set of documents. I have carefully considered the applicability of Rule 13 and other provisions contained in 1995 Rules and I have no doubt that the application being supported by the original set of Shipping Bills is not such a requirement which is wholly mandatory in the sense that an application not supported by the original set of the Shipping documents is liable to be rejected on that ground alone, without the prescribed authority being able to consider the reasons and circumstances as to why the applicant was prevented from filing the original set of documents. In a case like the present one where the applicant undoubtedly is not possessed of the original documents since those admittedly are lying with the respondents, the purpose behind 1995 Rules cannot be allowed to be defeated by the insistence of the respondents that despite the documents lying with them, the petitioner''s application should be rejected only because it was not accompanied by the original documents. This was not the intention under 1995 Rules. Here is a case where an applicant claiming some relief under 1995 Rules is sought to be thrown out of even the consideration process only because of the insistence about the submission of original documents which admittedly are not in possession of those documents. If the Respondents ever doubt the veracity of authenticity of the xerox copies, it is always open to them to take recourse to such verification methods as are available to them or are permissible under law. I have therefore, no doubt that if under the abovementioned circumstances, the petitioner filed the application under 1995 Rules and supported the same with the xerox copies of the triplicate set of shipping bills, such application is maintainable, subject of course to the observance of other requirements of 1995 Rules and the submission of other documents, if required.

9. For the aforementioned reasons I allow this petition I direct that the respondent Nos. 1 and 2 shall consider the application of the petitioner for the drawback duty under 1995 Rules in the light of the observations made hereinabove and pass appropriate orders with in reasonable period which hopefully shall not exceed beyond 3 months from today.

10. Thus, this application is disposed of but in this facts and circumstances there will be no order as to costs.

11. All parties are to act on a xerox signed copy of the Dictated Order on the usual undertakings.