

(2006) 08 MAD CK 0145
In the Madras High Court
Case No : C.M.A. No. 2622 of 2005

The Commissioner of Customs

APPELLANT

Vs

L.T. Karle and Co. and The Customs, Excise and Service Tax
Appellate Tribunal

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Customs Act, 1962 — Section 114, 2, 28AA, 50(2), 51
Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Rule 3, 4, 6, 6(1)

Citation : (2006) 112 ECC 488 : (2006) ECR 488 : (2007) 207 ELT 358

Hon'ble Judges : P.P.S. Janarthana Raja, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : R. Ramanlal, for the Appellant; Narendra Tuckker, for K.S. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.

I - Subject in issue

1. The drawback on imported materials, in the custom laws, is an allowance made by the Government upon the duties due on imported merchandise, when the importer, instead of selling it in the imported land, re-exports it. In other words, it means the refunding of such duties already paid on the imported merchandise.

2. Chapter X of the Customs Act deals with the drawback allowable on re-export of duty paid goods, the drawback on imported materials used in the manufacture of goods which are exported, the interest on drawback and the prohibition and regulation of drawback in certain cases.

II - Order in appeal and substantial questions of law

3. Aggrieved by the order of the second respondent-the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the CESTAT"), allowing the claim of duty drawback in respect of 4 shipping bills filed by M/s. L.T.Karle & Co., the first respondent herein, who admittedly imported the materials used in the manufacture of the goods, namely Ladies 100% Cotton Woven Blouse/Shirt, the Revenue has preferred this appeal on the ground that since the said goods had been manufactured in M/s. Karle International, an 100% Export Oriented Unit (in short "100% EOU"), there was a violation to the proviso to Section 2(c) of the Notification No. 67/98 dated 01.09.1998, issued in exercise of the powers conferred by Rule 3 read with Rule 4 of the Customs and Central Excise Duties Drawback Rules, 1995, (hereinafter referred to as "the Rules") framed u/s 75(2) of the Customs Act (hereinafter referred to as "the Act"), raising the following substantial questions of law:

1. Whether the findings of the Tribunal in equating the Circulars permitting Brand Rate of Drawback with the claim for All Industry Duty Drawback is correct in law.
2. Whether the Tribunal is correct in law in overlooking the facts that the goods have been manufactured in 100% EOU and that the exporter has mis-declared such fact in the Shipping Bill.
3. Whether the Tribunal is correct in law in ignoring the fact that the required permission from the Assistant Commissioner in charge of the 100% EOU was not obtained by the exporter.

III - Backdrop of the Case

4.1. The first respondent is a partnership firm, a unit of Domestic Tariff Area (in short "DTA unit"). Its headquarters is at Bangalore. It imported raw materials for the purpose of manufacturing ladies garments viz., ladies 100% cotton woven blouse/shirt and for exporting the same thereafter. As there was no manufacturing facility available with the first respondent at its Unit III, No. 334, II Floor, HMT Main Road, Commercial Street, Bangalore-22, it sent the raw materials imported to M/s. Karle International, Bangalore, an 100% EOU, for converting the same into finished goods, viz., ladies 100% cotton woven blouse/shirt, which were subsequently exported at Tuticorin Customs House, under four shipping bills dated 5.8.1998, 21.1.1999, 21.1.1999 and 11.2.1999 against duty drawback of Rs. 4,37,986/-, 4,05,103/-, 8,29,308/- and 4,30,686/- respectively, thus involving a total duty drawback of Rs. 21,03,083/-. The appellant sanctioned the entire drawback and paid half of the same.

4.2. It is not in dispute that the first respondent obtained necessary permission from the Customs Department in July 1999, of course after exporting, for sending the raw materials to 100% EOU for conversion of the same into finished goods.

4.3. On 23.08.2001, the Commissioner of Customs, Trichirapalli, issued a show cause notice to show cause as to why,

(a) The duty drawback amounting to Rs. 21,03,083/- should not be denied in respect of the four shipping bills filed at Tuticorin Custom House in as much as the said goods have been manufactured in 100% EOU namely M/s. Karle International, Bangalore in violation of proviso 2(c) of Notification No. 67/98 Customs (NT) dated 1.9.98 issued under the Customs & Central Excise Duties Drawback Rules, 1995,

(b) The duty drawback amounting to Rs. 21,03,083/- should not be demanded under Rule 16 of the Drawback Rules read with Section 75(2) of Customs Act which had already been granted in respect of the four export shipment mentioned supra.

(c) The interest as contemplated u/s 75A(2) of the Customs Act, 1962 should not be demanded on the drawback amount of Rs. 21,03,083/- already sanctioned.

(d) Penalty should not be imposed u/s 114(iii) of the Customs Act, 1962 for having suppressed the fact of having got the export goods manufactured in a 100% EOU and also for having violated the provisions of Sub-section (2) of Section 50 of the Customs Act, 1962.

4.4.1. On receipt of the said show cause notice dated 23.8.2001, the first respondent in its reply dated 26.09.2001 and also in the personal hearing on 29.11.2001, admitted that the raw materials imported were supplied to M/s. Karle International, an 100% EOU, for manufacture of the finished goods, using the plant and machinery of the 100% EOU; and that the finished goods were exported thereafter on behalf of the first respondent viz., M/s. L.T.Karle & Co., a unit of DTA through M/s. Karle International, an 100% EOU, under four shipping bills referred to above and claimed duty drawback of Rs. 21,03,083/-, which was sanctioned by the appellant and 50% of the same was already paid to the first respondent.

4.4.2. In the reply dated 26.9.2001, the allegations that M/s. Karle International, an 100% EOU, did not obtain permission from the Customs authorities and that M/s. Karle International, the 100% EOU, misled the Revenue authorities by not mentioning in the shipping bills that the goods were manufactured by it, were denied stating that M/s. Karle International, an 100% EOU, obtained necessary permission from the customs authorities in July 1999 and there is no requirement to give any details in the shipping bills as to who had manufactured the finished goods.

4.4.3. According to the first respondent, there is no legal bar on the first respondent, a DTA unit, to supply the raw materials to M/s. Karle International, an 100% EOU, for manufacture of finished goods and to claim duty drawback on the goods manufactured and exported by the 100% EOU.

4.4.4. The first respondent, a unit of DTA, also placed reliance on the Circular No. 31/2000 dated 20.04.2000, which clarifies that DTA units shall be eligible for grant of drawback against duties suffered on their inputs, which are processed by

100% EOUs, for the manufacture of the finished goods and exported in accordance with the Circular No. 67/98 dated 14.09.1998.

4.4.5. That apart, it was contended that there is no necessity for M/s. Karle International, an 100% EOU, to obtain any permission from the Customs authorities, for manufacturing the finished products out of the raw materials imported, as Clause (3) of the Circular dated 14.9.1998 is not applicable to the facts of the case.

4.4.6. It is further contended that by way of abundant caution, M/s. Karle International, an 100% EOU, had also obtained permission in July 1999 and therefore, assuming that Clause (3) is applicable, the post permission obtained by M/s. Karle International, an 100% EOU, from the Customs authorities in this regard, satisfies the requirements contemplated under Clause (3) of the Circular dated 14.9.1998.

4.4.7. In any event, in view of Clause (4) of the Circular dated 14.9.1998, clarifying that there is no bar for M/s. L.T. Karle Co., Ltd. a DTA unit, to supply the raw materials imported to M/s. Karle International, an 100% EOU, for manufacturing and exporting the finished goods, the Clause 2(c) of the Notification dated 1.9.98 is not applicable to the present case.

4.5. However, the Commissioner, by order dated 7.2.2002 rejected the explanation offered by M/s. L.T.Karle Co. Ltd. and held that Clause 2(c) of the Notification dated 1.9.1998 is applicable to the instant case and therefore due to the violation to Clause 2(c), M/s. L.T. Karle Co., Ltd. is not entitled to claim the duty draw back. Accordingly, the Commissioner refused the duty drawback amounting to Rs. 21,03,083/- and demanded the repayment of the duty drawback already disbursed to the first respondent with interest u/s 75(A)(2) of the Customs Act. The Commissioner also imposed a penalty of Rs. 22,00,000/- on the first respondent u/s 114(iii) of the Customs Act, 1962.

4.6.1. Aggrieved by the order of the Commissioner, M/s. Karle Co. Ltd. the first respondent herein, preferred an appeal before the CESTAT.

4.6.2. The CESTAT, appreciating the contentions of the first respondent, M/s. Karle Co., Ltd. a DTA unit and also taking note of its earlier decision made in 2003 (87) ECC 657 and 2003 (156) ELT 548 , allowed the appeal holding that the first respondent, viz., M/s. L.T. Karle & Co. Ltd. a DTA unit, had made out a case on merits in its favour, as there is no mis-declaration or suppression of facts in the shipping bills, nor the claim availed by it is illegitimate, in view of Clause 4 of the Circular dated 14.9.1998 clarifying Clause 2(c) of the Notification dated 1.9.1998 issued in exercise of powers conferred under Rule 3 r/w Rule 4 of the Rules framed u/s 75(2) of the Customs Act.

5. Hence the above appeal raising the substantial question of law referred supra.

6. Both the learned Counsel for the appellant as well as the first respondent, M/s. L.T.Karle & Co. Ltd. a DTA unit, reiterated their submissions put forth before the

authorities below.

IV - Relevant provisions of the Act, Rules, Notification and the Circulars on the issue.

7.1. Before proceeding on the substantial questions of law raised, it is apt to refer the relevant provisions of law relating to the drawback allowance.

7.2. Chapter X of the Customs Act deals with the drawback allowance. In the said Chapter, Section 75 deals with the drawback on the imported materials used in the manufacture of goods, which are exported and the same reads as follows:

75. Drawback on imported materials used in the manufacture of goods which are exported - (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made u/s 51 by the proper officer, or being goods entered for export by post u/s 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on 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):

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under Sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall be deemed never to have been allowed and the Central Government may, by rules made under Sub-section (92), specify the procedure for the recovery or adjustment of the amount of such drawback;

(1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which

any operation has been carried out in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of Sub-section (1), be deemed to be imported material.

(2) The Central Government may make rules for the purpose of carrying out the provision 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 or processing of the goods or carrying out any operation on 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 or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest, if any, payable thereon;

(aa) for specifying the goods in respect of which no drawback shall be allowed;

(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under Sub-section (1) or interest chargeable thereon;

(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 or the person carrying on any process or other operation to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to enable such authorised officer to inspect the processes of manufacture, process or any other operations carried out and to verify by actual check or otherwise the statement made in support of the claim for drawback.

(d) for the manner and the time within which the claim for payment of drawback may be filed.

(3) The power to make rules conferred by Sub-section (2) shall include the power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export goods.

7.3. 75A(1) of the Act provides for the interest on the draw back in the case where the draw back payable to the claimant u/s 74 or Section 75 is not paid within a period of two months from the date of filing the claim. 75A(2) of the Act contemplates where any draw back has been paid to the claimant erroneously, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of draw back, interest at the rate fixed u/s 28AA from the date of expiry of the said two months to the date of recovery of such

draw backs.

8.1. The Central Government, in exercise of powers conferred u/s 75(2) of the Customs Act, referred to above, framed the Central Excise Duties Drawback Rules, 1995 (hereinafter referred to as "the Rules").

8.2. Rule 3 and Rule 4 of the Rules, which are relevant to the issue, read 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 rules made thereunder and,

(c) these rules,

a drawback may be allowed on the export of goods 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 on the rebate, refund or credit obtained:

Provided further that no drawback shall be allowed:

(i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture,

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

(iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimplipalam jute or mesta fibre), yarn, twist, twine, thread, cords and ropes;

(iv) if the said goods, being packing materials have been used in or in relation to the export of-

(1) jute yarn (including Bimplipalam jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;

(2) jute fabrics (including Bimplipalam jute or mesta fibre), in which jute

predominates in weight;

(3) jute manufactures not elsewhere specified (including Bimplipalam jute or mesta fibre) in which jute predominates in weight.

(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to,

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;

(f) any other information which the Central Government may consider relevant or useful for the purpose.

4. Revision of rates. The Central Government may revise amount or rates determined under Rule 3.

9.1. In exercise of powers conferred under Rule 3 read with Rule 4 of the Rules, the Central Government issued Notification No. 67 of 1998 dated 1.9.1998. Clause 2 of the said notification specifies the commodities/products which are not eligible for duty drawback. Clause 2(c) of the notification No. 67 of 1998 dated 1.9.1998 reads as follows:

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

New Delhi, the 1st September, 1998

NOTIFICATION

No. 67/98-CUSTOMS (N.T.)

In exercise of the powers conferred by Rule 3 read with Rule 4 of the Customs and Central Excise Duties Drawback Rules, 1995 (hereinafter referred to as the said rules) and in supersession of the Notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 22/97-Customs (N.T.), dated the 30th May, 1997, the Central Government hereby determines the rates of drawback as specified in the Table annexed (hereinafter referred to as the said Table), subject to conditions specified under the General Notes hereunder:

GENERAL NOTES:

1. ...

2. The rates of drawback specified in the said Table shall not be applicable to export of any of the commodities/products if such commodity/product is-

(a) ...

(b) ...

(c) manufactured and/or exported by a unit licensed as hundred per cent export-oriented undertaking in terms of the relevant provisions of the Import and Export Policy in force;

(d) ...

(e) ...

(f) ...

(g) ...

Provided that nothing contained under Clause (a) to (g) shall prohibit payment of drawback at a particular rate/amount if it has been specifically authorised under these General Notes or under any Serial/sub-serial number in the said Table.

9.2. As per Clause 3 of the notification dated 1.9.98, where the export product is not specifically covered by the description of goods in the Drawback Table, annexed to the said notification dated 1.9.98, the brand rate may be fixed on an application by an individual manufacturer/exporter in accordance with Rule 3 read with Rule 4 of the Rules.

9.3. Of course, the Central Government, by Circular No. 67 of 1998 dated 14.9.98, issued a clarification with regard to the permission to send out the goods for job work outside the units, which import the inputs, for the purpose of manufacturing the finished goods in the 100% EOUs. The relevant portion of the said circular dated 14.9.98, reads as follows:

Circular: 67/98-Cus dated 14-Sep-1998

Export-100% EOUs/EPZ/EHTP Units - Permission to send out goods for jobwork outside the unit.

Circular No. 67/98-Cus., dated 14-9-1998

[Form F. No. 305/147/93-FTT]

Government of India

Ministry of Finance [Department of Revenue]

Central Board of Excise & Customs, New Delhi

Subject: 100% EOU/EPZ/EHTP Units - Permission to send out goods for jobwork outside the unit - Regarding.

...

2. ...

3. It has now been decided that henceforth the permission to EOU/EPZ units for sub-contracting will be given by the Assistant Commissioner in-charge of the Export Oriented Unit (operating under Notification No. 53/97-Cus., dated the 3rd June, 1997 as amended by Notification No. 12/98-Cus., dated 27th April, 1998). Further the EOU/EPZ and EHTP units may be allowed to get a part of their production completed either from the DTA units or from other EOU/EPZ/EHTP units, provided raw-material for the manufacture of such goods, whether imported or indigenous, shall first reach and be accounted for in the statutory records of the above said units. Subsequently, these raw materials may be sent to the job worker for production of the final products. Final products manufactured from such raw materials shall be brought back from job worker's premises to the unit for accounting. The units will ensure that the wastage generated during the said job work is also brought back from the job workers' premises.

4. Further to utilise the idle capacity of the EOU/EPZ units, it has also been decided that the EOU/EPZ units in textile, readymade garments, agro-processing and granite sectors may be permitted to undertake job work from the DTA units provided the finished products produced by such EOU/EPZ units will be exported directly from EOU/EPZ units itself and these goods will not be sent back to the DTA.

5. The instructions cited in para 1 above stand modified to the above extent.

9.4. When a doubt arose whether Clause 2(c) of the notification dated 1.9.98 is a total bar for sanctioning the duty drawback, the Central Government issued another circular No. 31 of 2000 dated 20.4.2000 clarifying its earlier circular No. 67 of 1998 dated 14.9.98 with respect to the eligibility of the DTA units for grant of drawback against duties suffered on the inputs, which are processed by EOU/EPZ units. The said circular dated 20.4.2000 reads as follows:

Circular: 31/2000-Cus dated 20-Apr-2000

DTA units eligible for grant of drawback against duties suffered on their inputs

which are processed by EOU/EPZ units

Circular No. 31/2000-Cus., dated 20-4-2000

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

It was provided in Board's Circular No. 67/98-Cus. Dated 14-9-1998 issued vide F. No. 305/147/93-FTT that DTA units may utilise the idle capacity of EOU/EPZ units in certain sectors for manufacturing exports goods.

2. In such cases, the inputs which are supplied by DTA units for processing by EOU/EPZ Units are procured by DTA units on payment of applicable duties. Various Trade Associations and the Ministry of Commerce have brought out that the incidence of such duty on inputs consumed in the manufacture of the export goods can be rebated only through the Brand Rate Drawback route.

3. The issue has been examined in the Board. It has been decided that in view of the above mentioned facts, the DTA units shall be eligible for grant of drawback against duties suffered on their inputs which are processed by EOU/EPZ units for the manufacture of goods which are exported in accordance with the said Circular No. 67/98.

4. Such DTA Exporters will be eligible for payment of Brand Rate of Drawback against duties suffered on inputs, on submission of proof of payment of duty. Accordingly, drawback will be payable to such exporters under Rule 6(1) of the Customs and Central Excise Duties Drawback Rules, 1995, at the rate fixed on specific application. The procedure laid down under the said Drawback Rules will have to be followed for fixation of Brand rates of Drawback. Such exporters will have to apply to the Directorate of Drawback for fixation of Brand rates of exports under DEPB. However, under no circumstances, such exporters will be allowed to claim All-Industry Rate of Drawback.

9.5. As per the above circular dated 20.4.2000, the DTA units are eligible for duty drawback on the following conditions:

(i) The inputs which are supplied by DTA units for processing by the EOUs should have been procured by DTA units on payment of applicable duties, provided the goods which are exported are in accordance with the Circular No. 67 of 1998 dated 14.9.98; and

(ii) The said DTA units will be eligible for payment of Brand Rate of Drawback against duties suffered on inputs, on submission of proof of payment of duty.

9.6. Therefore, the condition required for exporting in accordance with the Circular No. 67 of 1998 dated 14.9.98 is that the finished products produced by 100% EOUs will be exported directly from the 100% EOUs and the same will not be sent back to the DTA units.

V - Relevant Rules of Construction

10.1. It is a settled law that the principle that fiscal statutes should be strictly construed does not rule out the application of the principles of reasonable construction to give effect to the purpose or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids, as are permissible under law [Shree Sajjan Mills Ltd. v. Commissioner of Income Tax, M.P. Bhopal (1986 Tax Law Reporter 48 at p.58)].

10.2. In order to apply the principles of reasonable construction to give effect to the purpose or intention of the provision, as apparent from the scheme of the Act, the Court must endeavour to harmonise different provisions in the same Act and prefer an interpretation which would lead to a harmonised construction rather than to lead to inconsistency. The cardinal principle is that the statute should be interpreted in such a way as to avoid absurdity and to have harmonious effect.

10.3. The Court must construe the relevant provisions to make it workable, unless it is impossible to do so, rather than make it meaningless.

10.4. An attempt must always be made to reconcile the relevant provisions as to advance the remedy by the statute, but not to deny the remedy provided under the statute, otherwise, the very purpose or the intention of the statutory provision would manifestly be defeated.

10.5. The purpose and intention of the legislature for enacting Section 75(1) of the Act, viz., to settle duty drawback on the imported materials used in the manufacture of the goods, which are exported, has to be taken into consideration, before denying the said statutory benefit to the persons, who are entitled to; and any other construction of the rules or notifications or circulars issued thereunder would render the very legislative intention as absurd and meaningless.

10.6. In any event, it is settled law that if there are circulars, which have been issued by the Central Board of Excise and Customs, which place a different interpretation, that interpretation will be binding upon the revenue and that the circulars issued by the revenue are binding primarily on basis of language of statutory provisions buttressed by need of adjudicating officers to maintain uniformity in levy of tax/duty throughout the country and not on the basis of promissory estoppel, and that when a circular remains in operation, the revenue is bound by it and cannot be allowed to plea that it is not valid nor that it is contrary to the terms of statute.

VI - Reasonings and Findings on the questions of law

11.1. In the light of the above relevant provisions and the rules of construction, we are now obliged to decide the questions of law raised in this appeal.

11.2. We have carefully read Section 75 of the Act, which deals with drawback on imported materials used in the manufacture of goods which are exported and it

is obvious that Section 75 comes into operation when the imported materials are used in respect of the goods manufactured, processed or on which any operation has been carried out in India. It further contemplates that the inputs of such goods manufactured or processed in India should have suffered duty for claiming a drawback u/s 75 of the Act. In other words, no drawback could be claimed if inputs do not suffer duty even though such goods or product is manufactured or processed in India out of the non-duty paid materials or inputs. Where goods or products manufactured or processed out of the duty paid materials or inputs, a drawback should be allowed on duties of customs chargeable under this Act on any such imported materials used in the manufacture or process of such goods or products. The duty drawback being an allowance made by the Government upon the duties due on imported inputs, when the importer, instead of selling it in the land, used the same in the manufacture or process of the goods, viz., final products and re-exported the finished goods, he is required to satisfy the conditions prescribed under the provisions of Section 75(1) of the Act for claiming the duty drawback. As referred to above, the Central Government, thus framed Customs and Central Excise Duties Drawback Rules, 1995 and in exercise of the power conferred under Rule 3 read with Rule 4 of the said Rules issued necessary notifications and also issued further clarifications by way of circulars, as already mentioned above.

11.3. It is not the case of the appellant that the first respondent, a DTA unit, is not entitled for the duty drawback u/s 75 of the Act on the imported materials used in the manufacture of the goods, which are exported. But the appellant refused the duty drawback to the first respondent, a DTA unit, on the following grounds:

- (i) the finished goods were manufactured in the 100% EOU;
- (ii) the first respondent, a DTA unit, has not obtained permission from the authorities concerned before transporting the raw materials/inputs imported on payment of duty; and
- (iii) the first respondent, a DTA unit, has not mentioned against column 7 in the shipping bill to indicate that the goods were manufactured by the 100% EOU.

11.4. The appellant has raised three questions of law on the above admitted facts and circumstances of the case, which are referred to above.

12.1.1. The first question of law raised is whether the findings of the Tribunal in equating the Circulars permitting Brand Rate of Drawback with the claim for All Industry Duty Drawback is correct in law.

12.1.2. Brand Rate of Drawback arises only in the case where no amount or rate of drawback has been determined in respect of any goods and in the case where any manufacturer-exporter or exporter of such goods or the supporting manufacturer apply to the Commissioner in writing for determination of the amount or rate of drawback thereof stating all the relevant facts as provided

under Rule 6 of the Rules. But, in the instant case, such contingency does not arise at all nor the Tribunal had dealt with the Brand Rate Drawback, because for the raw materials or inputs in question, the Central Government has specified the amount/rate of drawback by issuing necessary notifications under Rule 3 read with Rule 4 of the Rules. Therefore, the first question does not arise for our consideration at all and it is answered accordingly.

12.2.1. The second question of law raised is whether the Tribunal is correct in law in overlooking the facts that the goods have been manufactured in 100% EOU and that the exporter has mis-declared such fact in the Shipping Bill.

12.2.2. As it is contended by the learned Central Government Standing Counsel that column 7, which prescribes for the name of the manufacturer, has not been filled up by the exporter, we took the pain of searching column 7 in the shipping bills produced before us. But, there is no such column 7 at all as contended nor the learned Central Government Standing Counsel is in a position to bring to our notice column 7, which is now being complained as mis-declared by the first respondent, a DTA unit nor we could find any column in the shipping bill requiring the first respondent, a DTA unit to mention that the goods were manufactured in an 100% EOU. Unless any such column is prescribed in the shipping bills, or a statute, viz., Act, Rule, Notification or Circular, contemplates so, there is no necessity for the first respondent, a DTA unit to mention that the goods were manufactured in a 100% EOU. In the absence of any such qualifying requirement requiring the first respondent, a DTA unit to mention that the goods were manufactured in a 100% EOU, it cannot be said that it is mandatory for the first respondent, a DTA unit, to mention the same nor it would be fair to deny the duty drawback on the ground that the first respondent failed to mention that the finished goods were manufactured in the 100% EOU, strictly speaking, which is not required in the eye of law.

12.2.3. A mandatory obligation, which must be strictly observed, cannot be imposed without any specific provision in the Act or Rule or Notification or Circular, demanding the same.

12.2.4. Sections 74, 75 and 76 of the Act and Rules 3 and 4 of the Rules framed under the Act and the notifications as well as the circulars issuing clarifications in that regard, being fiscal statute should be strictly construed, also required to be construed harmoniously applying the principle of reasonable construction to give effect to the purpose or intention of the relevant provisions as apparent from the scheme of the Act.

12.2.5. Once there is no dispute as to the entitlement of the first respondent, a DTA unit, for availing the benefit of the duty drawback u/s 75 of the Act for the imported materials used in the manufacture of the goods which are exported, denial of the same on fictitious reason is, in our considered opinion, arbitrary and capricious. Refusal to sanction the duty drawback on the materials/inputs imported, on such imaginary reasons, would otherwise defeat the very intention

of the legislature referred in detail supra.

12.2.6. As it is a settled law that fiscal laws must be strictly construed, words must say what they mean and nothing should be presumed or implied, at the risk of repetition, we observe that even though Clause 2 (c) of the notification dated 1.9.98 states that the rates of drawback specified in the Table shall not be applicable to export of any of the commodities/products if such commodity/product is manufactured and/or exported by a unit licensed as hundred per cent export-oriented undertaking in terms of the relevant provisions of the Import and Export Policy in force, the same stands clarified by a subsequent circular No. 31 of 2000 dated 20.4.2000 to the effect that DTA units may utilize the idle capacity of EOU/EPZ units, the inputs which are supplied by DTA units for processing by EOU/EPZ units are procured by DTA units on payment of applicable duties and the DTA units shall be eligible for grant of drawback against duties suffered on their inputs which are processed by EOU/EPZ units for the manufacture of goods which are exported in accordance with the Circular No. 67 of 1998.

12.2.7. The Constitution Bench of the Apex Court in *Collector of Central Excise, Vadodra v. Dhiren Chemical Industries* [2002] 126 STC 122, held that if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the revenue. Similar view was taken by the Apex Court in *Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries*, .

12.2.8. In *Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. and Another*, , the Apex Court held that the circulars issued by the revenue are binding primarily on basis of language of statutory provisions buttressed by need of adjudicating officers to maintain uniformity in levy of tax/duty throughout the country and not on the basis of promissory estoppel, and that when a circular remains in operation, the revenue is bound by it and cannot be allowed to plea that it is not valid nor that it is contrary to the terms of statute.

12.2.9. The harmonious reading of Circular No. 67 of 1998 dated 14.9.1998 and Circular No. 31 of 2000 dated 20.4.2000, in the light of Clause 2 (c) of the Notification No. 67 of 1998 dated 1.9.1998 and the proviso mentioned therein, therefore, makes it clear that the DTA units are eligible to send out the goods to the 100% EOUs for job work outside the DTA units and they are also eligible for the grant of duty drawback against the duties suffered on their inputs, which are processed by 100% EOUs for manufacturing the finished goods, which are exported directly from the 100% EOUs, without sending them back to the DTA units.

12.3.0. In the light of the above discussion, we hold that question of mis-declaration in column 7 of the shipping bills by the first respondent does not arise and the duty drawback sanctioned to the first respondent, a DTA unit, as per Rule 3 read with Rule 4 of the Rules and the notification and the circulars issued therein cannot, therefore, be denied on the ground that the finished goods

were manufactured in the 100% EOU. Hence, the second issue is answered in favour of the assessee.

13.1. The third question of law is whether the Tribunal is correct in law in ignoring the fact that the required permission from the Assistant Commissioner in charge of the 100% EOU was not obtained by the exporter.

13.2. In view of the circular dated 14.9.98 issued in clarification to Clause 2 (c) of the notification dated 1.9.98 which was issued in accordance with Rule 3 read with Rule 4 of the Rules, the question of getting permission from the authorities concerned does not arise at all and in any event, when Section 75(3) of the Act provides that the power to make rules conferred by Sub-section (2) shall include the power to give drawback with retrospective effect, the refusal to give due weightage to the permission obtained by the first respondent in July 1999, even though it is post-period permission, cannot be appreciated, as such permission has to be considered not only to advance but also to achieve the object of the purpose and intention of Section 75 of the Act, viz., sanctioning the duty drawback suffered by the first respondent on the materials/inputs imported and used in the manufacture of finished goods, which are exported and not to defeat the same. Hence, we answer the last question of law also in favour of the assessee.

14. Accordingly, the appeal is dismissed answering the questions of law raised in the affirmative, in favour of the assessee and against the Revenue. No costs.