(2008) 08 DEL CK 0129

In the Delhi High Court

Case No : L.P.A. No''s. 2133-35 of 2006 and 1359 of 2007

Union of India (UOI) and Others APPELLANT

Vs

Select Impex Ltd. RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0129

Hon'ble Judges : Mukul Mudgal, J;Manmohan, J

Bench : Division Bench

Advocate : Ashwini Bhardwaj, for the Appellant; C. Hari Shankar, N. Jagdish and S. Sunil, for the Respondent

Judgement

Manmohan, J.—The present Appeals being LPA Nos. 2133-35/2006 and 1359/2007 have been filed against the judgment and orders passed by learned Single Judge whereby the Writ Petitions filed by the Respondents herein have been allowed and writ of mandamus have been issued to the Appellants i.e. Union of India to immediately release DEPB Credit to the Respondents in respect of the export of consignment of quartz wrist watches with gold bracelet.

2. Since identical issues are involved in these appeals, they are being disposed of by a common order.

3. Briefly stated, the material facts of these appeals are that in exercise of powers conferred under Para 4.11 of the Export and Import Policy, 1997-2002, the Directorate General of Foreign Trade notified following credit rates under the DEPB Scheme:

36. Quartz analog clocks/time pieces with or 21.00% without Alarm/Chime/ Pendulum function & Quartz timing mechanism.

37. Quartz analog watches Digital 21.00% electronic watches.

Above named rates were to cover exports made on or after 15th

April, 1998.

4. The Respondents herein being the original writ petitioners exported quartz wrist watches with gold bracelet prior to 1st April, 1999 and in turn claimed benefits under DEPB Scheme.

5. Subsequently, Public Notice No. 1 (RE-99)/97-02 was issued which reads as follows:

In exercise of powers conferred under paragraph 4.11 of the Export and Import Policy, 1997-2002, as notified in the Gazette of India extraordinary, Part-II, Section 3, Sub-section (ii) vide S.O. No. 283(E) dated 31.03.1997, the Director General of Foreign Trade hereby notified the Handbook of Procedures (Vol.1) (Revised Edition March 99), 1997-2002, as contained in Annexure to the Public Notice. This shall come into force from Ist April, 1999.

This issues in public interest.

(emphasis supplied)

6. On 31st March, 1999 the following was also inserted as general instruction No. 4 in Appendix 28A of the Handbook of Procedure:

The DEPB rate aims to neutralize the incidence of duty on the inputs used in the export product. Therefore, the DEPB rates as given in Appendix 28A refer to normally tradable/exportable product. Items such as gold Nibs, Gold Pen, Gold Watches etc. though covered under the Generic description of writing instruments and watches are thus not eligible for benefit under the DEPB scheme.

(emphasis supplied)

7. The Appellants herein denied the benefits of the DEPB Scheme to the Respondent on the ground that export of quartz watches with gold straps was not what was envisaged at the time when 21% DEPB credit was notified for such exports. The Appellants submitted that the notifications dated 31st March, 1999 was merely clarificatory and not amendatory and consequently according to the Appellants the Respondents were not entitled to any credit for such exports.

8. Learned Single Judge of this Court while allowing the writ petition filed by the Respondents herein held that general instruction 4/general para 4 introduced by way of notification dated 31st March, 1999 was an amendment of the DEPB Scheme and not a clarification. Learned Single Judge, after holding that in fiscal matters retrospectivity was an exception, held that the notification dated 31st March, 1999 was to apply to exports carried out after 1st April, 1999 and not to exports carried out prior to the said date. The relevant portion of learned Single Judge''s order is reproduced hereinbelow:

...In this regard I would entirely agree with the reasoning adopted by the Three Member Bench of the CEGAT to the effect that so far as inputs and output norms are concerned the subject consignment falls under Sl. No. B132 i.e. Quartz

Analog Watches: case with or without integrated bracelet Watch Straps/ Bracelets. The consignment in question in this petition has been duly exported and it is not controverted that valuable foreign exchange has already come into country. The very fact that the consignment was permitted to be exported by the Customs Department at least leads to the position that the Authorities/ Department concerned construed the Notifications in the manner understood by the Petitioners. The only conclusion which can be arrived at is that the Department did not articulate in clear terms the circumstances in which DEPB credit at the rate of 21% would be permissible to Quartz Analog Watches with or without gold straps. Even accepting that credit at the rate of 21% under the DEPB was not what was contemplated, benefit of the doubt must be given to the Petitioner. The wordings of Public Notice No. 1, even though it is dated 31.3.1999 in terms states that it would come into force from 1-4-1999. If it was merely clarificatory in nature this date would not have been mentioned.

7. The consignment had already been exported prior to 1-4-1999. The Petitioner was, therefore, fully entitled to the benefits of the Scheme as per its simple and straightforward interpretation. It is clear that this interpretation did not fall in line with what the Department intended and that is the reason why Public Notice No. 1 was issued. This, however, cannot have the effect of disentitling the Petitioner from availing of the benefits of the DEPB credit at the rate of 21% in terms of Public Notice No. 14 dated 4-6-1998. Quite rightly, the loop-hole that had manifested itself has been diligently plugged, but with applicability to transactions after 1-4-1999. The Petitioner''s case does not fall in this category.

9. Keeping in view the facts of this case, we are of the opinion that quartz wrist watches with gold bracelets would fall in the generic description of quartz watches at serial Nos. 36 & 37 of the DEPB Scheme. In fact, our interpretation is in consonance with the general instruction No. 4/general para No. 4 introduced on 31st March, 1999 inasmuch as it admits that gold watches are covered under the generic description of watches.

10. Consequently, the respondents who had exported quartz wrist watches with gold bracelet prior to 1st April, 1999, in our view, had rightly claimed benefit of the 21% credit rate under the DEPB Scheme as the above rates, which were notified by the Directorate General of Foreign Trade were to cover exports made on or after 15th April, 1998. Moreover, the public notice dated 31st March, 1999 was amendatory in nature and could only govern export transactions executed after 1st April, 1999.

11. In the result, since the view taken by the learned Single Judge is fully justified, the present LPAs being devoid of merits are dismissed but with no orders as to costs.

