
(1999) 10 BOM CK 0075

In the Bombay High Court

Case No : Writ Petition No. 1496 of 1993

Videocon International

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 129D(2), 129D(3), 129D(5), 129DA, 51
Customs and Central Excise Duties (Drawback) Rules, 1971 — Rule 14

Citation : (2000) 121 ELT 613 : (2000) 1 MhLj 210

Hon'ble Judges : B.H. Marlapalle, J;A.S. Bagga, J

Bench : Division Bench

Advocate : K.R. Bulchandani, holding for A.S. Bajaj, for the Appellant; P.G. Godhamgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The petitioner-assessee exported aluminium electrolytic capacitors through 16 shipping bills on 28-10-1991 after the respondent No. 3 had passed an order of clearance of export u/s 51 of the Customs Act, 1962. Admittedly, the exported items were exempted from duty and the assessee was entitled for the duty drawback. On lodging the claim for duty drawback the assessee has received an amount of Rs. 14 crores against the said 16 shipping bills. It appears that subsequently the revenue, on investigations, felt that the duty drawback was claimed without complying with the statutory provisions and hence, on 23-6-1992, a demand notice under Rule 14 of the Duty Drawback Rules came to be issued against the assessee. This notice was challenged before this Court in Writ Petition No. 1424 of 1992 which was disposed of on 29-6-1992 by granting liberty to the assessee to file an appeal before respondent No. 4 against the demand notice received on certain conditions. The assessee has filed such an appeal and the same is pending.

2. It is admitted fact that the revenue did not invoke its powers u/s 129DA of the

Customs Act, 1962 before the demand notice under Rule 14 was issued. After the appeal was filed by the petitioner in pursuance of the order passed by this Court (Mane and Dani, JJ-) in Writ Petition No. 1424 of 1992, the respondent No. 2 has passed a review order on 14-10-1992 by invoking his powers u/s 129D(2) of the Customs Act. Pursuant to this order, the revenue has filed an appeal before respondent No. 4 on 16-10-1992 and the same is pending. The review order passed by respondent No. 2 on 14-10-1992 has been assailed in the present petition filed before this Court on 28-4-1993. By an order dated 27-4-1993, this Court (Mane and Dani, JJ-) granted Rule and interim stay in terms of prayer "E" with liberty to apply. The revenue has filed its affidavit-in-reply on 27-10-1993. While the petition is pending, Civil Application No. 2323 of 1995 has been moved with a prayer to vacate the interim order granted by this Court on 27-4-1993 or in the alternative, prayer was made to fix the writ petition for early final hearing. The assessee has filed affidavit-in-reply to the said Civil Application on 30-7-1999. By consent of the parties, the writ petition was fixed for final hearing pursuant to the order passed by this Court on 28-9-1999.

3. The order passed by respondent No. 2 on 14-2-1999 u/s 129D(2) of the Customs Act has been questioned mainly on the ground that Sub-section (5) of the said section operates as a bar against the powers available under Sub-section (2) of the said Act. In the instant case, Section 129D(5) of the Customs Act reads thus:

(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purpose of assessment of any duty is in issue or is one of the points in issue.

Explanation. - For the purposes of this Sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purpose of assessment of duty includes the determination of a question -

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 (51 of 1975), or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975 (51 of 1975), or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or reduction of the amounts in respect of

such matters as are specifically provided in this Act.

4. Regarding the tenability of this petition, learned counsel appearing for the assessee submitted that if regard be had to the provisions of Sub-section (5) read with clause (d) of the explanation thereto, the order impugned in this petition is wholly without authority in law and, therefore, the appeal filed by the revenue pursuant to the said impugned order is not tenable before respondent No. 4. It is further contended that if the appeal itself is not tenable, it is not necessary for the assessee to appear before the Appellate Authority and oppose the appeal and, therefore, the assessee has approached this Court directly invoking the writ jurisdiction under Article 226 of the Constitution of India to quash and set aside the said impugned order.

5. We are, therefore, required to examine a short question as to whether the impugned order passed by respondent No. 2 is hit by the provisions of Sub-section (5) of Section 129D of the Customs Act. There is no dispute that the main issue involved is ultimately regarding the correctness of the duty drawback received by the assessee and it does not relate to any payment of duty as the items exported are exempted from payment of duty. The Customs Act provides for drawback on imported materials used in the manufacture of goods which are exported. In the instant case, the assessee has exported aluminium electrolytic capacitors which were used in the manufacture of exported goods. Aluminium electrolytic capacitors are listed at Sub-Serial Number 4711 in the Schedule of Drawback rates. Section 75 of the Customs Act provides for certain mandatory requirements for claim of duty drawback on the exported items and if the conditions set out therein are not complied with, the claim is liable to be rejected.

6. The respondent No. 2, while passing the impugned order, contended that on investigations the following deficiencies were noticed and they were not taken note of while passing an order u/s 51.

(a) Out of the 16 shipping bills, only three of them had indicated the market value of the exported items and on the remaining 13

shipping bills, the prevailing market value of the exported goods was not mentioned.

(b) The declarations which were attached with the shipping bills also did not mention the market value of the exported goods.

(c) The specifications of the exported goods were also not mentioned in the shipping bills or the declarations.

The said order further mentions that while assessing the drawback shipping bills, it was noticed that the value of goods shown in the AR 4 was much lower than the F.O.B. value shown on the shipping bills and, therefore, for all these reasons, the order was reviewed with a direction to file an appeal before respondent No. 4 for determination of the following points :-

"Whether the orders of the Assistant Collector in permitting export without examining the correct market price of the goods, since these were drawback shipping bills without taking a declaration from the exporters regarding the correct market price of the goods and without examining whether the goods exported were of the same specifications for which the value was declared and these were in conformity with the specifications of the goods mentioned on the contract, were correct and proper."

7. When duty drawback is claimed by an assessee, it is imperative that the prevailing market price, the specification and the class of exported goods is available on record. Though a copy of the export contract was available with the revenue so as to verify and settle the claim of duty drawback, it is necessary to verify the exported goods vis-a-vis the export contract regarding their class, specifications and value etc. Even though 3 of the shipping bills did mention the prevailing market value of the exported goods, remaining 13 bills as well as declaration attached thereto did not contain specifications of the exported goods as well as the prevailing market value. It appears that the revenue had doubts regarding quantum of duty drawback paid to the assessee and this apprehension has been due to the deficiencies in the shipping bills as well as the declarations as stated hereinabove. The intention of the respondent No. 2 in passing the impugned order of review does not indicate that there is any issue regarding the determination of any question related to the rate of duty or value of the goods for the purposes of assessment of any duty which is an issue or one of the points in the order. We are, therefore satisfied that the order impugned is intended to ensure that the requirements of Section 75 of the Customs Act are fully met in respect of the assessee while the duty drawback has been reimbursed and the bar of Sub-section (5) of Section 129D of the Customs Act does not apply in the instant case. If the assessee has enjoyed a benefit under a statute, it is imperative that it stands to face the review at the hands of the revenue and no prejudice is caused to such an assessee by subjecting it to face a statutory appeal. The review order impugned has been passed within the period prescribed u/s 129D(3) of the Customs Act, and the assessee has been, to some extent, protected by an earlier order passed by this Court on 29-6-1992 in Writ Petition No. 1424 of 1992. We are of the considered view that the assessee must face the enquiry as contemplated in the appeal pending consequent to the review order under challenge in the instant petition and prove that it has received the duty drawback amount as per law. It would not be permissible for this Court to scuttle the statutory investigations by interfering in the order impugned, by exercising its extraordinary powers under Article 226 of the Constitution.

8. In the result, the petition is dismissed. Rule discharged. Interim order passed by this Court on 27-4-1993 stands vacated. As the petition has been pending before this Court for the last about 6 years, we direct the respondent No. 4 to dispose of the pending appeal as expeditiously as possible, and preferably, within a period of six months from today.

9. Learned counsel for the assessee has made an oral application at this stage for continuation of the stay order passed by this Court on 27-4-1993 for a further period of 4 weeks. We do not find any merit in this prayer and the same is hereby rejected. Certified copy be made available on priority basis, if applied for.