(2014) 03 AHC CK 0069

In the Allahabad High Court

Case No : Writ Tax No. 166 of 2014

Zaz and Zaz Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 305 ELT 126

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Dilip Gupta, J

Bench : Division Bench

Advocate : Pankaj Bhatia and Gopal Verma, Advocate for the Appellant; Ramesh Chandra Shukla, A.S.G.I, Advocate for the Respondent

Judgement

1. The petitioner claims to be engaged in manufacture and export of finished leather, leather footwear and finished goods. The petitioner exported goods under claim of drawback of duties in respect of certain shipping bills from ICD, Chakeri, Kanpur. A notice was issued to the petitioner under Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 on 22 December, 2010 on the ground that the petitioner had not produced bank realisation certificates evidencing the realisation of export proceeds within the period stipulated. The petitioner submitted a reply dated 27 January, 2011 and claimed that its buyers had sought extension of time for making payment in view of the slump in the market and also submitted 9 bank realisation certificates evidencing repatriation of the sale proceeds. The Adjudicating Officer by an order dated 18 August, 2012 directed the petitioner to deposit an amount of Rs. 29,92,513/- under Rule 16A together with interest on the ground that though the petitioner was paid the amount of drawback against 9 shipping bills, it had not produced evidence of realisation or extension of time by the Reserve Bank of India for repatriation of proceeds. The order was confirmed by the Commissioner (Appeals) on 27 December, 2012 and a revision was dismissed by the Union Government in Ministry of Finance, Department of Revenue on 19 December, 2013. Rule 16A of the Drawback Rules, 1995 stipulates as follows:-

16A. Recovery of amount of Drawback where export proceeds not realised.-

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the (Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below:

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of (thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be) shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within (thirty days) of the receipt of the said order:

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds:

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in Rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant, provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India.

2. The petitioner had moved the Reserve Bank of India for granting extension of time to realise the payments of export proceeds, from the order of the Revisional Authority, it appears that the Reserve Bank had initially allowed the extension of time for realisation of the proceeds until 13 June, 2013. Subsequently, on 5 March, 2014 the Reserve Bank extended the time for receipt of the export

proceeds until 31 March, 2014 subject to the condition that no further extension of time would be granted. A copy of the letter of the Reserve Bank was forwarded to the petitioner on 7 March 2014.

3. The case of the petitioner, as set up in the writ petition, is that the petitioner has in fact realised the sale proceeds.

4. In Birender Kaur Bajwa v. Director (Drawback), Department of Revenue - 2010 (255) E.L.T. 511, the Delhi High Court has held that even if an extension is granted by the Reserve Bank ex post facto, the drawback, which has been obtained by the exporter cannot be recovered so long as the sale proceeds are realised within the initial period of time allowed or the extended time.

5. In the present case, no recovery has been made against the petitioner of the drawback which has been realised and hence the provisions of sub-rule (4) of Rule 16A would not come into operation. The contention of the petitioner that all the export proceeds had in fact been realised needs to be factually verified. This exercise cannot be earned out by this Court in the exercise of its writ jurisdiction under Article 226 of the Constitution.

6. We are of the view that the appropriate order that should be passed in such circumstances would be to direct the Revisional Authority to verify the documentary evidence which has been relied upon by the petitioner for the purposes of establishing the realisation of the export proceeds within the extended period of time as granted by the Reserve Bank of India in respect of the shipping bills covered by the duty drawback which has been received. In order to facilitate this exercise, we set aside the impugned order of the Joint Secretary of the Union Government dated 19 December, 2013 and restore the proceedings back to the Revisional Authority for disposal afresh. The Revisional Authority shall verify whether the petitioner has in fact received all the export proceeds covered by the shipping bills in question within the time as extended by the Reserve Bank of India. We would expect that this exercise shall be completed expeditiously and preferably within a period of three months of the production of the certified copy of this order before the Revisional Authority. The petitioner shall, together with a certified copy of this order, produce an affidavit before the Revisional Authority all the material and documentary evidence for the purposes of establishing the realisation of the export proceeds. The Revisional Authority would be at liberty to conduct a further inquiry as may be necessary including production of such information and material as would be necessary for the purposes of determining the correctness of the submissions of the petitioner. The petitioner shall appear before the Revisional Authority with a certified copy of this order on 2 April, 2014, failing which the petitioner would lose the benefit of this order and the Union Government would be at liberty to make recovery in accordance with law. The writ petition is, accordingly, disposed of.