Tax Management India .com

https://www.taxmanagementindia.com

1992 (9) TMI 107 - HIGH COURT AT CALCUTTA

Other Citation: 1993 (65) E.L.T. 194 (Cal.)

ASSTT. COLLECTOR OF CUS. VERSUS HINDUSTAN MALLEABLE & FORGINGS LTD.

5780 of 1988

Dated: - 2-9-1992

Drawback - Goods imported found to be defective and re-exported

Judgment / Order

Prabir Kumar Majumdar and Abani Mohan Sinha, JJ.

[Judgment per : Prabir Kumar Majumdar, J.]. - This appeal has been preferred by the Assistant Collector of Customs and Others against the Judgment and Order dated March 20, 1992 passed by the learned Judge taking writ matters.

By a writ application, the respondent Hindustan Malleable & Forgings Ltd. claimed refund of sum of Rs. 1,92,828.29 as an amount of drawback under Section 74 of the Customs Act, 1962. The respondent-writ petitioner claimed this amount by way of drawback as the imported goods were re-exported, inasmuch as the said goods were found defective and, therefore, the writ petitioner claimed refund of duty paid on the imported goods. The Assistant Collector of Customs rejected the claim for refund of the said amount on the ground that the goods which were re-exported were not properly identified and the respondent-writ petitioner failed to establish an identification of the re-exported good before claiming a drawback under Section 74(1) of the Customs Act, 1962. The Assistant Collector of Customs held that the identity for the re-exported goods with reference to the import documents had not been established and as such the claim by the respondent writ petitioner merited rejection. From the said Order of the Assistant Collector of Customs, the respondent-writ petitioner preferred an appeal before the Appellate Authority, being the Collector of Customs (Appeals), Customs Office, Calcutta, and the Appellate Authority found that there was no doubt that the goods which were exported back to the supplier were nothing but re-exportation of defective parts and according to the Appellate Authority, the respondent-writ petitioner was entitled to a claim on this case. On the question of value of the consignments, the Appellate Authority observed that the reference to the value of the consignments at the time of exportation was based on a suspicion that the value of the consignments had deteriorated after it has been imported. The Appellate Authority also found that the export valuation was to be recorded in this context as equivalent to the goods which were supplied in lieu thereof, i.e., in lieu of the imported articles, and the Appellate Authority also found that Section 76 of the Customs Act, 1962 was not applicable. The Appellate Authority concerned ultimately found that the goods were defective and the same were-re-exported. As such according to the Appellate Authority, the respondent-writ petitioner was entitled to the full benefit of the drawback on the original value. The Appellate Authority with this observation allowed the appeal.

From this order, the appellants before us filed a revision application before the Central Government. The Central Government rejected the revision application. While rejecting the revision application, the Central Government observed that the drawings produced during the personal hearing indicated the exact

location of the defective components exported by the respondent-writ petitioner and that from the description of the goods imported a co-relation could be established to prove that the components received subsequently as replacements are the components for the main machine imported originally by the respondent-writ petitioner. The Central Government found that the respondent-writ petitioner would be entitled to drawback claim and also found that the order of the Collector of Customs (Appeals) was correct in law.

In this appeal, the appellants have contended that Section 74 of the Customs Act, 1962 stipulates that the goods which were re-exported should be the same as that were imported and the establishment of identity of the re-exported goods with reference to the imported ones is a vital question to be considered before admitting a claim for drawback under Section 74 of the Customs Act, 1962. According to the appellants, the identity of the goods was not established and the value of the defective goods which were re-exported could not be ascertained or determined only with reference to the import invoice at the time of importation as the same goods might have been deteriorated before re-exportation. The appellants also contend that the concerned authority was right in correcting the value of the invoice taking into consideration as to which particular goods were re-exported and what was the value thereof. According to the appellants, the value comes to Rs. 69,983/- and that was the correct value ascertained in respect of the re-exported goods and the respondent-writ petitioner was entitled to claim such as drawback and that was ultimately allowed.

We are unable to accept this contention of the appellants. We have also indicated above the respective orders starting from the order of the Assistant Collector of Customs. The order of the Assistant Collector of Customs rejecting the claim of the respondent-writ petitioner was reversed by the Appellate Authority and the Appellate Authority was of the view that the identification was fully established and the respondent-writ petitioner was entitled to claim the drawback for the amount as claimed. This view was also upheld by the Central Government on a revision application. These two orders, one the order of the Collector of Customs (Appeals) and the other of the Central Government on the revision application, were not challenged by the appellants and while implementing the directions of the Appellate Authorities, the appellants cannot, in our view, make fresh re-appraisement of the value of the re-exported goods. We have indicated above the relevant findings of the Appellate Authority as also the Central Government. It also appears that the Appellate Authority clearly found that the claim of the respondent-writ petitioner for drawback as indicated in the shipping bill was clear and the documents called for might not be necessary to determine the bona fide of the claim. We are of the view, therefore, that the appellants at this stage cannot challenge the valuation of the exported goods and re-appraise the same.

We hold that the learned trial Judge rightly held that the appellants refused to pay the claim of the respondent-writ petitioner on account of the export drawback without any reasonable or just cause and the appellants are not permitted to dishonour the order of payment passed by the Collector of Customs (Appeals) which was later confirmed by the Central Government. In the premises, we uphold the judgment and Order dated March 20, 1992 passed by the learned trial Judge in the writ application.

This appeal is, therefore, dismissed.

There will be no order as to costs.

All parties shall act on a signed copy of the Minutes of the operative part of this judgment upon usual undertaking.