(2011) 06 KAR CK 0068

Karnataka High Court

Case No: Writ Petition No. 15575 of 2010

Jubilant Organosys Limited		APPELLANT
	Vs	
Assistant Commissioner of Central Excise, Commissioner of Central Excise, Mysore Commissionerate, Commissioner of Central Excise (Appeals) and Union of India (UOI)		RESPONDENT

Date of Decision: June 28, 2011

Acts Referred:

- Central Excise Act, 1944 - Section 11 A, 11 BB
- Central Excise Rules, 2002 - Rule 18
- Customs Tariff Act, 1975 - Section 3, 8, 9 A

Hon'ble Judges: S. Abdul Nazeer, J

Bench: Single Bench

Advocate: G. Shivadass, for the Appellant; N.R. Bhaskar, CGSC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Abdul Nazeer, J.

The Petitioner is engaged in the manufacture of bulk drugs. In the usual course of its business, it avails credit of duty paid on inputs and such credit is utilised either for payment of duty on goods cleared into the domestic tariff area or towards payment of duty on goods exported under Rule 18 of the Central Excise Rules, 2002 (''Rules, 2002'' for short). The Petitioner has been regularly exporting bulk drugs and for the export so undertaken, it has obtained advance licenses for duty free import/procurement of inputs required for the manufacture of the bulk drugs. The advance licenses so obtained are being redeemed from time to time after discharge

of the export obligation. The Petitioner has been paying central excise duty on the finished products exported and has been claiming rebate on the duty so paid under Rule 18 of the Rules, 2002. The Petitioner filed 13 rebate claims for a total amount of ~ 1.02,63.079/- during the period 2005-2006 which was sanctioned by the first Respondent herein. The details of the amount sanctioned are indicated in the table below:

Sl.No.	Order-in-Original No. & date	Refund of rebate involved `
1.	20/2005 dated 19.08.2005	3,52.972
2.	21/2005 dated 19.08.2005	3,79,985
3.	22/2005 dated 19.08.2005	1,95,676
4.	24/2005 dated 24.08.2005	17.04.424
5.	25/2005 dated 19.08.2005	12,75,393
6.	32/2005 dated 27.10.2005	9,56,507
7.	33/2005 dated 31.10.2005	28,96,045
8.	38/2005 dated 24.11.2005	2,05,309
9.	39/2005 dated 28.11.2005	4,75,472
10.	40/2005 dated 07.12.2005	4,96,952
11.	41/2005 dated 07.12.2005	3,54,452
12,	42/2005 dated 07.12.2005	4,77,749
13.	43/2005 dated 24.11.2005	4,92,144
	TOTAL	1,02,63,080

2. The Petitioner has also received the amount from the department in terms of the order referred to above. The second Respondent issued a show cause notice as per Annexure "C" dated 7.7.2006 calling upon the Petitioner as to why the rebate sanctioned as above should not be recovered from them u/s 11-A of the Central Excise Act, 1944, on the ground that the Petitioner was not eligible for the rebate sanctioned unless they had availed the benefit of the notification No. 43/2002 -Cus dated 19.4.2002 in respect of the inputs imported under the advance licence. The Petitioner filed its reply dated 20.7.2006 to the show cause notice. In the reply, the Petitioner has stated that the show cause notice relied on the original text of notification No. 43/2002 -Cus and that the condition No. (v) of the said notification has been corrected by corrigendum and that Petitioner has not claimed the rebate of duty paid on materials used for manufacture of export goods but on the goods exported and that the interpretation of the said notification is inconsistent with the provisions of the EXIM policy and the Rules and the rebate claim not to be recovered by invoking the provisions of the said notification and requested to drop the notice.

In addition to the issue of show cause notice dated 7.7.2006, the department filed separate appeals against each of the above mentioned orders before the third Respondent challenging the grant of rebate on the ground that the assessing authority had erred in sanctioning the rebate without verifying as to whether the Petitioner had fulfilled the restriction imposed in condition No. (v) of notification No. 43/2002 -Cus dated 19.4.2002. The Petitioner filed objections to the said appeal and sought dismissal of the said appeals. The appellate authority passed an order in appeal No. 19/2007 CE dated 16.1.2007 in terms of which he has allowed the appeals filed by the department and held that the assessing authority has erred in granting the rebate. The order in appeal has been passed on the ground that the original authority has wrongly granted rebate of duty paid on goods exported inasmuch as the Petitioner availed of exemption from customs duty under notification No. 43/2002 -Cus dated 19.4.2002 on inputs imported and used in the manufacture of the products exported. Feeling aggrieved by the said order, the Petitioner filed a revision application No. 195/119/07-RA along with an application for stay before the 4th Respondent. After hearing the Petitioner, Respondent No. 4 passed an order dated 9.2.2010 wherein it is held that Petitioner had exported the goods except in one case during the period i.e March. 2005 to May, 2005 when the original notification No. 93/2004 -Cus dated 10.9.2004 was applicable and hence the rebate was disallowed in the case referred to above. Therefore, the Petitioner has filed this writ petition seeking the following reliefs:
(a) issue an appropriate writ, order or direction to quash and set aside the impugned order No. 198/10-CS (F. No. 195/119/07-RA-CS dated 16.2.2010) dated 9.2.2010 passed by the Revisionary Authority (Respondent No. 4) herein) Annexure ''A''.

(b) issue an appropriate writ to quash order in appeal No. l9/2007-CE dated 16.1.2007 passed by Respondent No. 3 (Annexure ''G'').

(c) direct the Respondents to pay the Petitioner the cost of this petition.

(d) issue appropriate writ, order/direction sanctioning interest u/s 11BB on the above amount.

(e) grant opportunity of hearing and ad-interim order staying the order dated 9.2.2010 and granting consequential relief. And

(f) pass such other order or orders as may be deemed fit and proper by this Hon''ble Court in the facts and circumstances of the case.

3. Learned Counsel for the Petitioner would contend that in exercise of the powers conferred by Sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government has issued the notification exempting materials imported into India against an advance licence issued in terms of sub-paras (a) and (b) of paragraph 4.1.1. of export and import policy from the whole of the duty of customs leviable

thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the additional duty and anti-dumping duty leviable thereon under Sections 3, 8 and 9A of the Customs Tariff Act, subject to various conditions. It is argued that condition No. (v) is a condition relating to export obligation which states that the export obligation as specified in the said licence is discharged within the period specified in the said licence or within such extended period as may be granted by the licensing authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under Rule 18 or Rule 19 of the Central Excise Rules. 2002 has not been availed. The said condition in the notification has been corrected by a corrigendum No. 43/2002-Cus dated 29.11.2002 wherein it has clarified that after the words "under Rule 18", the words "under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)" shall be corrected. The said corrigendum relates back to the date of the notification dated 19.4.2002. If that is so, the order of the assessing authority has to be sustained. In this connection, he has relied on the decision of the Allahabad High Court in Commissioner, Sales Tax, U.P., Lucknow v. Dunlop India Limited - (1994) 92 STC 571 and the decision of the Supreme Court in State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another, .

4. On the other hand, learned Counsel appearing for the Revenue submits that the corrigendum referred to above is prospective in nature and it will not have retrospective operation from 19.4.2002. In this connection, he has relied on the decision of the Kerala High Court in The Commissioner of Central Excise and Customs Vs. Mustang Rubbers Indl. Estate, .

5. Having regard to the contentions urged, the only point for consideration is whether the corrigendum dated 29.11.2002 has retrospective effect from the date of the notification dated 19.4.2002?

6. In P. Ramanatha Aiyar''s Advanced Law Lexicon, third edition, the meaning assigned to the expression ''corrigendum'' is as under:

Corrigendum: An error in a printed work discovered after the work has gone to press.

A printing or typographic error detected after publication and corrected separately on added page.

7. The Allahabad High Court in Dunlop India Limited''s case (supra) was considering the meaning of the expression ''corrigendum''. It has concluded that corrigendum is nothing but a correction and therefore, it relates back to the date of the notification corrected. It has been held thus:

In my opinion, Notification No. 4841 is in the nature of a correction (corrigendum) and, therefore, it dates back to the date of the notification corrected thereby, namely, June 11, 1974, on which date Notification No. 3867 was issued. A correction

is a correction only when it dates back to the original order or the proceeding as the case may be. It ceases to be correction if it is effective from the date of its issuance; it then becomes an amendment. This intrinsic nature of concept of correction cannot be lost sight of. By way of illustration, I may refer to a notification issued u/s 4 of the Land Acquisition Act, where it describes the boundaries of a particular land correctly but while describing its survey number it mentions 111/10 instead of 111/11. Suppose, a corrigendum is issued after one year correcting the number as 111/11, would it be permissible to argue that the date of notification u/s 4, so far as survey No. 111/11 is concerned, is not the original date of notification but the date of corrigendum notification? I think not. The same result should follow here. It is equally relevant to notice that in the margin to Notification No. 3867 not merely the notification number but full reference of notification is given as "ST-4748/X-900(15)-61" besides the date. Both the notifications, namely, No. 4748 and No. 3867 expressly purport to have been issued u/s 4-B and deal with the subject of recognition certificate and levy of concessional duty or exemption from duty, as the case may be.

It is then argued by the learned Counsel for the Petitioner that in matters of taxation, strict construction must be adopted and that if the Assessee is entitled to any advantage or benefit on account of any error or mistake of the assessing authority it should not be denied to him. I do not think that the said principle has any relevance here, where an accidental printing error is sought to be corrected in a statutory notification issued by the Government. It is difficult to deny this right of correction to the Government. Such a power is ancillary and incidental to the substantive power conferred upon the Government to issue a notification by Section 4-B. Such a power is necessary for an effective exercise of the substantive power.

8. In J.K. Udaipur Udyog Ltd.''s case (supra) the Apex Court has held that the use of the word ''corrigendum'' itself indicates, the intention was to correct and to rectify what the State Government thought had been erroneously done. It is clear from the aforesaid judgment that a corrigendum is nothing but a correction and it relates back to the notification itself.

9. In Mustang Rubbers Industrial Estate''s case (supra) relied on by the learned Counsel appearing for the Respondents, the High Court of Kerala was considering an amendment to the notification issued u/s 5(a)(i) of the Central Excise Act. The High Court while following the decision of the Apex Court in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, has held that the scope of notification has to be considered with reference to the statutory provision under which it is issued. Having regard to the language contained in Section 5(a)(i) of the Act, the Court has held that the notification will come into force on the date of its issue. The notification impugned therein did not provide for retrospectvity. Therefore, it comes into force on the date of issue, namely, 11.8.2003. That is not the position in the present case. The notification itself

states that the words and figures ''under Rule 18'' shall be corrected to read as ''under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)''. A corrigendum indicates the intention to correct and rectify the notification. Therefore, the said decision has no application for the facts of this case.

10. As has been discussed above, a corrigendum in question has been issued for correction of the notification and it relates back to the date of the notification corrected. It ceases to be a correction if it is effective from the date of its issuance. It then becomes an amendment. A correction relates back to the date of the notification itself. If that is so, the order of the appellate authority as also the revisional authority are contrary to the notification dated 29.11.2002.

11. In the light of the above discussions, I pass the following:

(i) The orders of the revisional authority and the appellate authority impugned herein are hereby quashed and the order of the assessing authority is restored.

(ii) Writ petition is allowed accordingly. No costs.