Kadri Mills (CBE) Ltd. Vs Union of India

Court: MADRAS HIGH COURT

Date of Decision: March 3, 2016

Citation: (2016) 334 ELT 642

Hon'ble Judges: M. Duraiswamy, J.

Bench: Single Bench

Advocate: S. Durairaj, Advocate, for the Petitioner; V. Sundareswaran, SC, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records in impugned order dated 27-7-

2015 on the file of the 2nd respondent and to quash the same and consequently, to direct the 6th respondent to sanction the rebate in cash.

2. It is the case of the petitioner that they are manufacturers and exporters of Textile products and that they were an 100% EOU Unit till 8-2-

2011. Further, the petitioner has stated that till this period no drawback was claimed on the goods exported. After becoming a DTA unit, they

exported manufactured goods (Tariff Item 630101 and 630201) by utilising the capital goods credit and input service credit earned during the non-

drawback period. According to the petitioner, this input service credit was eligible under Rule 5 of the Cenvat Credit Rules, 2004. The petitioner

was also granted higher rate of drawback dated 22-9-2011 since they had not availed the Cenvat credit of input and input services used in

manufacture of export goods as stipulated in the said notification. Subsequently, the petitioner applied for rebate under Notification No. 19/2004-

C.E. (N.T.), dated 6-9-2004, an amount of Rs. 81,315/- was granted in cash and re-credit of Rs. 20,80,124/- was granted on the ground that the

petitioner had availed higher rate of drawback. According to the petitioner, the same is not sustainable for the reason that the uniform rate of

drawback has been prescribed on 630101 (i.e.) there is no higher or lower rate of drawback and only capital goods credit and input service credit

earned prior to drawback period was utilized.

3. Mr. V. Sundareswaran, learned Standing Counsel for the respondents submitted that the petitioner had claimed higher rate of drawback on the

exported goods comprising of Customs, Central Excise and Service Tax portion and hence, rebate of duty paid on the export goods would result

in double benefit. Further, in the counter filed by the respondents, it has been stated that the petitioner had availed input service tax credit to the

tune of Rs. 1,28,912/- E. Cess of Rs. 2,579/- and SHE Cess of Rs. 1,289/- on the input services used for the impugned exported goods and

subsequently paid back the same. Further, the respondents have stated that by Circular dated 3-1-2003, it was clarified that the duty paid through

actual credit or deemed credit account on the goods exported must be refunded. According to the respondents, this circular is applicable where

rebate is eligible in the normal course. In the present case, the duty amount paid was not granted in rebate in cash but was ordered for re-credit in

the Cenvat credit account on the ground that if rebate is paid in cash, the same would lead to doubles benefit for the reason that the drawback

availed on the Customs, Central Excise and Service Tax portions.

4. The petitioner after clearing the goods on payment of duty under claim for rebate should not have claimed drawback for the Central Excise and

Service Tax portion for claiming rebate. The petitioner should have paid back the drawback portion availed before claiming rebate. However, this

was not done by the petitioner.

5. Mr. V. Sundareswaran, learned Standing Counsel for the respondents submitted that the issue involved in the present Writ Petition is covered

by the decision of this Court made in W.P. No. 1226 of 2016, dated 19-2-2016 [2016 (334) E.L.T. 584 (Mad.)] wherein it has been stated as

follows :

14. As per the proviso to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, a drawback may be allowed on the

export of goods at such amount, or at such rates, as may be determined by the Central Government provided that where any goods are produced

or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty

or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has

been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made

thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or of the Finance Act, 1994 and the rules made thereunder, the

drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained.

...

16. In the case on hand, the benefits claimed by the petitioners are covered under two different statutes - one under Customs, Central Excise

Duties and Service Tax Drawback Rules, 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise

Rules, 2002. Since the issue, involved in the present writ petition, is covered under two different statutes, the judgment relied upon by the learned

counsel for the petitioner is not applicable to the facts of the present case.

17. As per the proviso to Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner is not entitled to claim both

the rebates.

6. On a perusal of the order passed in W.P. No. 1226 of 2016 [2016 (334) E.L.T. 584 (Mad.)], it is clear that the benefits claimed by the

petitioner are covered under three different statutes under the Customs, Central Excise Duties and Service Tax Drawback Rules. As per the

proviso to Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner is not entitled to claim both the rebates.

7. As stated by the learned Standing Counsel appearing for the respondents, the issue involved in the present Writ Petition is covered by the

decision made in W.P. No. 1226 of 2016 [2016 (334) E.L.T. 584 (Mad.)]. When the petitioner had availed the duty drawbacks on Customs,

Central Excise and Service Tax on the exported goods, they are not entitled for rebate under the Central Excise rules by way of cash payment as it

would result in double benefit.

8. In these circumstances, I am of the view that the Writ Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Writ

Petition is dismissed. No costs.