

(2014) 02 MAD CK 0182

Madras High Court (Madurai Bench)

Case No: Civil Miscellaneous Appeal (MD) Nos. 165, 170 and 171 of 2011 and M.P. (MD) Nos. 1, 1 and 2 of 2011

Commissioner of Customs

APPELLANT

Vs

Stallion Garments

RESPONDENT

Date of Decision: Feb. 4, 2014

Acts Referred:

- Customs Act, 1962 - Section 129A, 129A(1)

Citation: (2014) 308 ELT 467

Hon'ble Judges: G. Chockalingam, J; A. Selvam, J

Bench: Division Bench

Judgement

A. Selvam, J.

These Civil Miscellaneous Appeals are directed against the Final Orders passed by the CESTAT in Final Order Nos. 862 of 2010, 863 of 2010 and 865 of 2010. The respondents herein are the exporters of Garments and they are entitled to get drawback amount together with interest. Under the said circumstances, the respondent have made their respective claims and the claims of the respondents have been rejected by the Deputy Commissioner of Customs and the rejection orders passed by the Deputy Commissioner have been challenged before the Commissioner of Appeals (Tiruchirapalli). The Commissioner of Appeals has confirmed the rejection orders passed by the Deputy Commissioner of Customs and against the orders passed by the authorities, relevant appeals have been filed before the Tribunal (CESTAT).

2. The CESTAT, after hearing both sides, has allowed all the appeals and thereby directed the Department to pay interest on drawback amount. Against the orders passed by the Tribunal, these Civil Miscellaneous Appeals have been preferred by the Department.

3. On the side of the appellant, the following common substantial questions of law have been raised for consideration:

"(1) Whether the CESTAT is having jurisdiction to hear an appeal from the order of Commissioner (Appeals) in a matter related to payment of drawback, when there is a specific bar under Section 129A(1) of Customs Act?

(2) Is not the C.B.E. & C. Circular No. 57/95-Cus., dated 30-5-1996 is applicable to the present case?

(3) Whether the respondent is eligible to get drawback even before CESTAT order, dated 26-3-2008?"

4. It is an admitted fact that the respondents are the exporters of Garments. It is also equally and admitted fact that as per Chapter X of the Customs Act, 1962, the respondents are entitled to get drawback amount together with interest. Only on the basis of enabling provision available in Chapter X of the Customs Act, 1962, the respondents have made their claims with regard to interest. The authorities below have uniformly rejected the claim of interest put forth by the respondents. But the Appellate Tribunal (CESTAT) has set aside all the orders passed by the authorities and directed the Department to pay interest.

5. The learned counsel appearing for the appellant has drawn the attention of the Court to the provision of Section 129A of the Customs Act, 1962 wherein in the first proviso Clause it is mentioned that no appeal shall lie to the appellate Tribunal in respect of the items mentioned therein and in Clause (c) it has been clearly mentioned that payment of drawback as provided in Chapter X and the rules made thereunder. Therefore, it is quite clear that as per first proviso Clause available in Section 129A of the Customs Act, 1962, the Appellate Tribunal is not empowered to deal with any matter relating to drawback amount including interest.

6. As stated earlier, the main contention put forth on the side of the appellant is that the Appellate Tribunal is not having jurisdiction as per Section 129A of the Customs Act, 1962 to deal with the matter arising out of interest.

7. The learned counsel appearing for the respondents has contended that with regard to payment of drawback amount already a proceeding has been initiated and as per orders passed by the Appellate Tribunal (CESTAT), the Department has paid the same and the present matters are related to payment of interest and further the entire Chapter 10 of the Customs Act, 1962 is not ousted from the purview of the Appellate Tribunal (CESTAT). Under the said circumstances, the Appellate Tribunal has rightly accepted the claim of interest made by the respondents and therefore, the Final Orders in question passed by the Appellate Tribunal are not liable to be set aside.

8. It is an admitted fact that Chapter 10 of Customs Act, 1962 deals with drawback amount, interest extra.

9. Even a glance of Section 129A of the Customs Act, 1962 would clearly show that the Appellate Tribunal has no jurisdiction with regard to any of the claim mentioned in Chapter X of the Customs Act, 1962. Since Section 129A of the Customs Act, 1962 has explicitly stated about the exclusion of Chapter X of the said Act and since only in Chapter X of the said Act drawback amount and interest have been mentioned, it is very clear that the Appellate Tribunal has no jurisdiction to deal with any matter arising out of interest.

10. In order to fortify the contention put forth on the side of the appellant, the following decisions are relied upon:-

"(a) In 2009 (246) E.L.T. 646 (Tri.-Kolkata) [Mercury exports and Manufacturing private limited, v. Commissioner of Customs (Port), Kolkata].

(b) In 2001 (136) E.L.T. 217 (Tri.-Mumbai) (Premium Intertrade Private Limited v. Commissioner of Customs, Mumbai)."

11. In both the decisions, the contention put forth on the side of the appellant has been clearly accepted in view of exclusion of Chapter X of the said Act from the purview of Appellate Tribunal as per provision of Section 129A of the said Act.

12. Of course, it is true that the Department has paid drawback amount only as per orders passed by the Tribunal and Department has not preferred any appeal. Simply because an appeal has not been preferred by the Department with regard to payment of drawback amount, the Court cannot come to a conclusion that the Department is precluded from raising a point with regard to the orders passed by the Tribunal in respect of payment of interest on drawback amount as per provision of Section 129A of the said Act. Therefore, viewing from any angle, the contention put forth on the side of the appellant is really having attractive force and the common substantial questions of law raised on the side of the appellant are legally sustainable and altogether, the present Civil Miscellaneous appeals are liable to be allowed. In fine, these Civil Miscellaneous Appeals are allowed without costs and the orders passed by the Appellate Tribunal (CESTAT) in Final Order Nos. 862 of 2010, 863 of 2010 and 865 of 2010 are set aside. However, it is open to the respondents to get remedies by way of filing revision before the Central Government. Consequently, connected Miscellaneous Petitions are closed.