

(1988) 05 CAL CK 0004

Calcutta High Court

Case No: C.R. No. 9324 (W) of 1978

Md. Ibrahim Hazi Mollah

APPELLANT

Vs

Asstt. Collector of Customs and
Others

RESPONDENT

Date of Decision: May 6, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1988) 18 ECC 105

Hon'ble Judges: Sudhir Ranjan Roy, J

Bench: Single Bench

Judgement

Sudhir Ranjan Roy, J.

The petitioner is a partnership firm registered under the Indian Partnership Act and is a manufacturer and exporter of woollen carpets.

2. For manufacturing carpets the petitioner requires various raw materials like woollen yarn, cotton yarn, jute yarn, dyes and chemicals, which the petitioner purchases from the market on payment of central excise duty in accordance with the Central Excises and Salt Act.

3. In the instant writ petition, the petitioner has claimed drawbacks in respect of the goods exported for the period from 1973 to 1977 after having allegedly complied with Rule 11 of the Drawback Rules, 1971. The number of claims so made is 45 but in spite of repeated reminders the payment in respect thereof amounting to Rs. 66,438.35 parse is yet to be made by the respondents.

4. Being aggrieved the petitioner has come up for redress before this Court under Article 226 of the Constitution.

5. According to the respondents in their affidavit-in-opposition 26 claims out of the 45 claims made by the petitioner, have been finalised and the petitioner has been

paid the drawback amounts in respect thereof.

6. Regarding the other 19 claims, in respect of 5 there is neither any all industry drawback rate for the goods exported nor the petitioner produced any rate letter from the Ministry for the same. Accordingly, in respect of the said 5 claims the petitioner is not entitled to drawback.

7. In respect of 5 other claims, shipping bills were not filed at all.

8. 4 other shipping bills did not belong to the petitioner and they relate to the claims by some other exporters.

9. The remaining 5 claims were closed due to the non-availability of the shipping bills and the merits of those five bills cannot be considered unless the petitioner submits the relevant documents, namely, copy of the shipping bill, bank certified invoices, bill of lading, etc.

10. Thus, according to the respondents, the petitioner is not entitled to the relief claimed in the instant writ petition.

11. Significantly, the petitioner did not file any affidavit-in-reply controverting the averments so made by the respondents in their affidavit-in-opposition in spite of sufficient opportunities being given to the petitioner.

12. As a matter of fact, Mr. Bhattacharyya, the learned Counsel representing the petitioner, took several adjournments for producing relevant documents to controvert the averments made in the affidavit-in-opposition and to file an affidavit-in-reply, but nothing was done ultimately.

13. So, the fact remains that out of 45 claims for drawback submitted by the petitioner for the period from 1973 to 1977, 26 claims, according to the un-controverted averment made in the affidavit-in-opposition, have since been satisfied and the petitioner has been paid the money in respect thereof.

14. As regards to the remaining 19 claims, specific reasons have been assigned in paragraph 4 of the affidavit-in-opposition, for non-satisfaction thereof.

15. As already seen, regarding 5 of such unsatisfied claims, the petitioner did not produce any rate letter from the concerned Ministry and there is neither any all industry drawback rate for the goods exported by the petitioner.

16. It is undoubtedly true that the petitioner has specifically stated in the writ petition that before filing the claims Rule 11 of the Customs and Central Excise Duties Drawback Rules, 1971 were duly complied with, but barring the mere averment nothing else was produced in support thereof.

17. Incidentally Rule 11(a) of the Rules as referred to above provides that the claims should state on the shipping bill or bill of export the description, quantities and such other particulars as are necessary for deciding whether the goods are entitled to

drawback, and if so, at what rate or rates. And it is the specific averment of the respondents in the affidavit-in-opposition that in respect of 5 claims the petitioner did not produce any rate letter.

18. Rule 6 of the Rules provides that any manufacturer or exporter may within the period of limitation as prescribed therein, apply in writing to the Central Government for the determination of the amount of rate of drawback stating all relevant facts including the proportion in which the materials or components are used for the production or manufacture of goods and the duties paid on such materials or components. But here there is nothing to show that any such step was taken by the petitioner in the matter of determination of the rate.

19. Regarding 5 other claims it has been specifically averred by the respondents that in respect thereof the shipping bills were not filed and as already seen, the petitioner has not filed any affidavit-in-reply, controverting the said averments.

20. Similarly, as regards to the averments made in respect of 4 claims that they did not relate to the petitioner, the petitioner has not come forward to state on oath that the said averment is not correct.

21. So far [as] the remaining 5 claims are concerned, the respondents have left the matter open since as regards to those 5 bills, it is the case of the respondents that those claims cannot be considered without the relevant documents being filed by the petitioner.

22. On behalf of the petitioner it was not submitted before me that the petitioner is ready and willing to produce the relevant documents in that regard.

23. It was contended by Mr. Bhattacharyya, the learned Counsel representing the petitioner, that since the petitioner has specifically stated in the writ petition that before filing the claims the petitioner had duly complied with Rule 11 of the drawback rules of 1971 and since the said averment has not been specifically controverted by the respondents in their affidavit-in-opposition, it should be deemed that Rule 11 of the relevant Rules was duly complied with by the petitioner.

24. However, the respondents as already seen, have given specific reasons for not satisfying 19 out of 45 claims made by the petitioner including non-production of any rate letter in respect of 5 claims, which amounts to denial of the claim made by the petitioner that the petitioner had duly complied with Rule 11 of the Rules. And that being so, the petitioner should have produced dependable materials or at least should have filed an affidavit-in-reply controverting such averment made in the affidavit-in-opposition.

25. In my judgment, the reasons given by the respondents for non-satisfaction of 19 claims out of the total 45 claims, in paragraph 4 of the affidavit-in-opposition, ex facie appear to be satisfactory and in the absence of any thing dependable to the contrary it cannot be said that 19 out of 45 claims were unjustly disallowed by the

respondents.

26. As regards to 26 claims which, according to the respondents, have been satisfied and the money has been duly paid to the petitioner. I have no other alternative but to accept the averment so made in the affidavit-in-opposition since the petitioner has not come forward to deny the same by filing an affidavit-in-reply.

27. The writ petition, as such, is without merits.

28. The rule issued upon the respondents be, accordingly, discharged and interim order, if any, do stand vacated.

29. There will be no order for costs.