

IN THE HIGH COURT OF GUJARAT

AT AHMEDABAD

R/Special Civil Application No. 6775 Of 2019

INOX INDIA PVT LTD
THROUGH ITS AUTHORIZED SIGNATORY
MR PAVAN LOGAR

Vs

UNION OF INDIA

J B Pardiwala & A C Rao, JJ

Dated: June 27, 2019

Appellant Rep by: Mr Hasit Dave(1321)
Respondent Rep by: Mr Py Divyeshvar(2482)

Cus - The petition challenges the denial of refund of Drawback, Interest on Drawback and Refund of CVD, under their re-export, even when the same is long due and pending to assessee and they have exhausted every remedy under Law till date, to claim the same and which is otherwise clearly admissible to petitioner - The authority concerned should undertake the necessary process of sanctioning and taking the final decision with regard to the ground of refund of interest on CVD as well as on drawback, at the earliest - The respondent No.3 is directed to complete the process and take an appropriate decision in this regard within a period of four weeks: HC

Writ application disposed of

JUDGEMENT

Per: J B Pardiwala:

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs:

"A) Your Lordships be pleased to issue an appropriate writ, order or direction, including a writ in the nature of Mandamus, or any other appropriate writ order or direction, directing the concerned respondent authorities to immediately complete the process of sanctioning and grant the refund of interest on CVD amounting to Rs.2,52,492/- and surrendered duty drawback amount of Rs.1,17,029/- with interest paid on the same amounting to Rs.35,189/- all paid under protest, under letter dtd 31-5-2017, within a stipulated time now, with interest @ 18 from the date they were due till final payment.

B) Any other reliefs deemed fit proper & incidental in the facts of the present case may kindly be granted."

2. The case of the writ-applicant in his own words as pleaded in the writ-application is as under:

"2. The present petition challenges the denial of refund of Drawback, Interest on Drawback and Refund of CVD, under their re-export, even when the same is long due and pending to them and they have exhausted every remedy under Law till date, to claim the same and which is otherwise clearly admissible to them.

3. The petitioner states and submits that even when the provisions of grant of this Refund are explicitly clear and in favour of the petitioner to receive the same under the Provisions of the Customs Act and the applicable Notifications governing the same, the same are not being extended to them.

4. The petitioner states and submits that the denial of the refunds eligible to them as duly prescribed in this regards, specifically incorporated to boost and encourage exporters like the petitioner's contributing to the vital foreign exchange earnings for the country. Such denial of their Refund to the petitioner is a gross discrimination in violation of the right to do equal & fair business, thereby violating articles 14 and 90 1G of the constitution of India besides their other basic rights.

5. The petitioner states and submits that the brief facts leading to the filing of the present petition are that, they have been duly maintaining and operating from the unit at the Special economic zone, since a long time now and have been duly manufacturing their products for the purposes of exclusive exports, under the preamble and purpose of the special economic zone act read with the DGFT Policies as issued from time to time, as introduced by the Government of India.

5.1 The petitioner states and submits that in furtherance of their export activities and under the specific schemes of the Government of India, introduced by the Ministry of commerce & industries, to boost and encourage exports, they had duly exported consignment of One Fuel Tank to Oman, on 30-3-2015, under Shipping Bill no 8692815 under the Duty Drawback Scheme.

5.2 However since there was a complaint from the buyer M/s Global Gas Services LLC Oman in this regards, and finding that repairs were not possible in view of the peculiar nature of the defect, an entirely new replacement tank was exported to the Buyer, in lieu of reimporting the original defective tank.

5.3 The said re-export of the Tank was done under free shipping bill no 3221684 dtd 3-1- 2017, after obtaining GR Waiver no EDFW/529/TS/2017/1 dtd 2-1-2017, without reclaiming any drawback benefits, as the same were already claimed in the original export.

5.4 At the stage of re-import of the defective original consignment, the Petitioner had to pay excise duty amounting to Rs. 7,75,000/- as CVD and interest on CVD amounting to Rs.2,52,492/- and also were made to surrender the duty drawback of Rs.1,17,029/- with interest on the same

amounting to Rs.35,189/- all under protest under letter dtd 31-5-2017, since though the benefit of Notification no 94/96-Cus dtd 16.12.1996 was available to them the same was not extended by the assessing group, on the re-import of the Original consignment under Bill of entry no 9711526 dtd 16-5-2017.

5.5 The Petitioner submits that since their re-import and re-export to clear the defects is clearly covered under Sr no 3 of Notification no 94/96-Cus Dtd 16-12-1996 and since the Petitioner had only claimed the export benefit of drawback once only during their original export they preferred a refund of all amounts paid under protest vide their Refund Application dtd 5-7-2017.

5.6 The Petitioner states and submits that again on no action by the Department, on the above another reminder was issued on 14-11- 2017 by them, to the customs authorities.

5.7 The Petitioner thereafter upon no response on the above issued a detailed Communication dtd 5-4-2018 was further issued by them, clarifying their entire position again with the clear legal position and extracting the notification no 94/96-Cus dtd 16-12-1996 and showing that their case is clearly covered under Sr no 3 of the same.

5.8 Upon this the Petitioner for the first time received a reply/communication dtd 27-4- 2018, on 4-5-2018, from the office of the Deputy Commissioner (Refund) Respondent no 3, suggesting to file all documents and to do so in the prescribed format in duplicate.

5.9 The Petitioner states and submits that upon the above they duly clarified under their further letter dtd 21-5-2018 that, they have already under their original Refund application dtd 5-7-2017, submitted all necessary documents, but had yet not received any response on the same.

However the Petitioner again annexed all necessary documents vide Sr nos 1 to 11 therein, and the copy of their original refund application and re-clarified that their case is not covered under Sr no 1 of Notification 94/96, but clearly under Sr no 3 thereof.

They again explained the entire sequence of their events, to claim these refunds.

5.10 The Petitioner states and submits that again upon this the Respondent no 3 office, issued a further letter dtd 13-6-2018 that, we have not submitted relevant documents pertaining to Refund claim under S.27 of the Customs Act which are essentially the Undertaking Cum Declaration, CA Appointment Letter, CA Certificate and Challan of Payments made under Protest. And copies of the Company ledger a/c statements, about amount due for refund and for unjust enrichment.

5.11 The Petitioner states and submits that under their reply dtd 3-7-2018 to the above, they duly submitted all the other documents required from

them under Sr nos 1 to 4, which were Copy of Undertaking & Declaration, Copy of CA Certificate about not passing duty burden to anyone, Self-Certified copy of Challan, Proof of drawback surrender and payment of interest etc.

It was clarified by them again, that all payments were made by them under protest since the assessing officer, had then not permitted the re-import otherwise.

Request for Personal hearing was also made in this letter, since no doubts further remain on this issue.

5.12 The Petitioner states and submits that upon the above a letter dtd 12-7-18, was issued by the Respondent no 3 office to the Respondent no 4, i.e The Deputy Commissioner Import Group, to verify and confirm the genuineness of the Petitioner's refund claim about the deposits made by them and their surrender of drawback amount with interest since it was all done under protest.

Considering the delay already and refund being a time bound issue, urgent reply was sought now by the office of the Respondent no 3.

5.13 The petitioner states and submits that however they did not receive any positive response in this regards for a very long time in this regards, for which they continued to issue reminders, to the SEZ officers of the Customs at Mundra.

5.14 The petitioner states and submits that thereafter they also undertook several personal follow ups, with concerned authorities of the Customs Mundra however no specific clarification or any confirmation, was given to them in this regards.

5.15 The petitioner states and submits that thereafter, they have been sending several reminders and personally following up with the customs officers, through their staff in this regards, but nothing has been happening and now even after the passage of 4 years of their original exports and clear refunds, long due to them are not being given to them."

3. Mr. Dave, the learned counsel appearing for the writ applicant invited the attention of this Court to a letter addressed by the Deputy Commissioner (Ref.), Custom House, Mundra to the Deputy Commissioner, Import Group – IV, Custom House, Mundra with regard to the controversy in question. The letter reads thus:

*"To
The Deputy Commissioner,
Import Group-IV,
Custom House, Mundra.*

*Sub:- Refund Application, for Refund of amount,
deposited under protest, against Bill of Entry
No., 9711526 dated 16.05.2017 (Interest, on*

**CVD Rs. 2,52,492.00 and surrender of
Drawback Rs. 1,17,029.00 and Interest
Rs.35,189.00-M/Reg.**

M/s Inox India Pvt. Ltd. has filed a refund claim of Rs. 4, 04,710/- in respect of B/E No. 9711526 dt. 16.05.2017, vide their letter dated 03.07.2018 stated that the on account of Re-imported the original tank which is rejected by their customer and they have availed export benefit only once on original export and not availed any export benefit on replacement goods and surrender of DBK Rs. 1,17,034/- Interest on DBK Rs. 35,184/- and Interest on CVD Rs. 2,52,492/- (Total Refund Claimed of Rs. 4,04,710/-)

2. In this regard, it is requested to verify/confirm the genuineness whether the importer has deposited the amount as assessed by assessing officer, As per B/E No. 9711526 dt. 16.05.2017 and surrender amount against Shipping Bill No. 8692815 dated 30.03.2015 amount of Rs. 1,52,218/-, Now they claiming refund of amount which is deposited under protest i.e. surrender of DBK Rs. 1,17,034/-, interest on DBK Rs. 35,184/- and interest on CVD Rs. 2,52,492/- (Total Refund claimed of Rs. 4,04,710/-).

Your early reply in the matter is highly appreciated as the refund claim is time bound matter.

**[N K SAINI]
Deputy Commissioner (Ref)
Custom House, Mundra"**

4. Mr. Dave also invited the attention of this court to one another letter dated 12.07.2018 which is at page 106 which reads thus:

**"To
The Deputy Commissioner,
Drawback Section,,
Custom House, Mundra.**

**Sub:- Refund Application, for Refund of amount,
deposited under protest, against Bill of Entry
No., 9711526 dated 16.05.2017 (Interest, on
CVD Rs. 2,52,492.00 and surrender of
Drawback Rs. 1,17,029.00 and Interest
Rs.35,189.00- M/Reg.**

M/s Inox India Pvt. Ltd. has filed a refund claim of Rs. 4, 04,710/- in respect of B/E No. 9711526 dt. 16.05.2017, vide their letter dated 03.07.2018 stated that the on account of Re-imported the original tank which is rejected by their customer and they have availed export benefit only once on original export and not availed any export benefit on replacement goods and surrender of DBK Rs. 1,17,034/- Interest on DBK Rs. 35,184/- and Interest on CVD Rs. 2,52,492/- (Total Refund Claimed of Rs. 4,04,710/-)

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Your early reply in the matter is highly appreciated as the refund claim is time bound matter.

**[N K SAINI]
Deputy Commissioner (Ref)
Custom House, Mundra"**

5. Mr. Divyeshvar, the learned Standing Counsel appearing for the respondent No.3 submitted that the matter is being looked into and an appropriate decision be taken in accordance with law at the earliest.

6. Having regard to the relief prayed for, we are of the view that the authority concerned should undertake the necessary process of sanctioning and taking the final decision with regard to the ground of refund of interest on CVD as well as on drawback, at the earliest.

7. The respondent No.3 is directed to complete the process and take an appropriate decision in this regard within a period of four weeks from the date of the receipt of the order. The ultimate decision should be communicated in writing, to the writ-applicant.

8. With the above, this writ-application is disposed of. Direct service is permitted.