

M/s MJR EXIM PVT LTD AND ORS
Vs
COMMISSIONER OF CUSTOMS AND ANR

D N Patel, CJ & C Hari Shankar, J

Dated: February 18, 2020

Appellant Rep by: Ms Vibha Narang, Adv.

Respondent Rep by: Mr Satish Aggarwala, Sr. Standing Counsel with Mr Vineet Sharma, Adv.

Cus - During the relevant period, an SCN was issued to the assessee for recovery of duty drawback - It was alleged that after receiving such benefit u/s 75 of the Customs Act, the sale proceeds were not yet received by the assessee, who had made some exports - On adjudication, the proposals in the SCN were confirmed - Hence the present writ petition.

Held - It appears that no proof of receipts of such proceeds were supplied by the assessee to the Revenue and hence the demand for recovery of drawback is made with imposition of penalty - It is seen that the O-i-O can be appealed against before the Tribunal - There are no reasons to entertain the writ petition where the O-i-O in question can be appealed against - As and when such appeal is filed, the same may be decided upon by the appropriate forum as per law: HC

Writ petition dismissed

JUDGEMENT

Per: D N Patel:

CM APPL.6628-6629/2020 (Exemption)

Allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 1885/2020

1. This writ petition has been preferred with the following prayers:

"(i) Issue a writ in the nature of certiorari or any other appropriate writ or an order directing the Respondent customs authorities to quash the proceedings initiated against the petitioner under show cause notice No.RD/JC/ACE/SUB/07/2017 dated 31.1.2017.

(ii) A writ on the nature of prohibition restraining the respondent no.2 from imposing, collecting and recovery of alleged Drawback confirmed in order in original No.SKM/JC/ACE/125/2018 dated 21.03.2018 passed by the respondent No.2 under section 75 of Act ibid read with Rule 16A of Drawback Rules.

(iii) Pass any other writ, order(s) or directions as this Hon'ble court may deem fit and more appropriate in the interest of the petitioner."

2. Having heard the counsel for both sides and looking to the facts and circumstances of the case, it appears that Show Cause Notice for recovery of duty drawback was issued on 31st January, 2017 (Annexure A-1 to the memo of this writ petition) for Rs.1,21,45,524/-.

3. It appears that after receiving a benefit of the duty drawback under Section 75 of the Customs Act, 1962 read with Rules made thereunder, the sale proceeds have not yet been received by the exporter – petitioner and hence recovery of duty drawback was given to this petitioner.

4. Show Cause Notice was adjudicated upon by the concerned authorities and Order-In-Original has already been passed by the respondent authorities dated 21st March, 2018. It appears that no proof of receipt of said proceeds have ever been supplied by this petitioner to the respondents and hence, the liability has been imposed vide Order-In-Original by this petitioner fixed at Rs.1,21,45,524/- and a penalty of Rs.1,00,000/- each, upon each petitioner.

5. It appears that Order-In-Original is an appealable order before the CESTAT. Hence, we see no reason to entertain this writ petition as the Order-In-Original is an appealable order. As and when the appeal is preferred, the same will be decided by the appropriate forum in accordance with law, rules, regulations and Government policy applicable to the facts of the present case and without being influenced by the observations made by this Court in the present order.

6. With the aforesaid observations, this writ petition is hereby disposed of.