



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7238 OF 2009**

UNION OF INDIA AND ORS.

APPELLANT(S)

VERSUS

M/S. B. T. PATIL AND SONS
BELGAUM (CONSTRUCTION) PVT. LTD.

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

Appellants i.e., Union of India, Director General of Foreign Trade and Joint Director General of Foreign Trade by means of this civil appeal have taken exception to the judgment and order dated 22.08.2008 passed by a Division Bench of the High Court of Karnataka, Circuit Bench at Dharwad in Writ Appeal No.356 of 2006 affirming the judgment and order of the learned Single Judge dated 22.09.2005 allowing Writ Petition No.45525 of 2004 filed by the respondent.

2. Facts lie within a narrow compass. Nonetheless, for a determination of the *lis*, it would be necessary to briefly narrate the relevant facts as projected by the respondent in the related writ petition.

2.1. Respondent is a class-I contractor specializing in the field of civil contract works especially tunneling and hydro electric power projects.

2.2. Central Government had approved funding of a project called Koyna Hydro Electric Power Project, Maharashtra by the International Bank for Reconstruction and Development, which is an arm of the World Bank. In the said project, respondent was awarded a sub-contract to execute civil works from Lake Intake to the Emergency Valve Tunnel. Respondent has relied upon a letter dated 08.08.1991 issued by the Chief Engineer of the project. Relevant portion of the letter reads thus:-

4.2. Information regarding the benefits available under the "Deemed Export" concept for this World Bank Aided (Loan) Project may please be obtained by the contractors from their own sources and the information gained by them may be utilised, while quoting the rates.

2.3. A deemed export scheme was announced under the Exim Policy, 1992-1997 by the Ministry of Commerce, Government of India and the Director General of Foreign Trade under the Foreign Trade (Development and Regulation) Act, 1992. Certain

benefits under 'deemed export' were also included in the said Exim Policy.

2.4. Respondent completed the construction work awarded to it in the month of March, 1996 and thereafter filed applications dated 25.03.1996, 13.09.1996 and 20.12.1996 claiming duty drawback for Rs.35,75,679.00, Rs.88,98,206.00 and Rs.85,05,853.00 respectively.

2.5. By endorsements dated 10.11.1996, 06.12.1996 and 31.12.1996, Director General of Foreign Trade (for short 'DGFT' hereinafter) rejected the applications of the respondent for duty drawback on the ground that supplies in civil construction work were not eligible for 'deemed export' benefit.

2.6. Notwithstanding such rejection, respondent made representations for reconsideration of such decision and sought for duty drawback under the Exim Policy, 1992-1997. One such representation is dated 05.02.1997. However, the same was rejected by the DGFT vide the order dated 10.08.1997 stating that civil construction work did not qualify for drawback.

2.7. On 20.08.1998, DGFT issued a circular under the successor Exim Policy, 1997-2002 clarifying that supply of goods under paragraph 10(2)(d) of the 1997-2002 Exim Policy would be

entitled for 'deemed export' benefit. It may be mentioned that the Exim Policy of 1992-1997 had expired with effect from 31.03.1997.

2.8. On 05.12.2000, DGFT issued a circular that drawback was to be paid in respect of excise duty on supply of goods to projects funded by multilateral agencies.

2.9. In the above scenario, respondent once again addressed a letter dated 28.08.2001 to the DGFT to finalize the issue. However, DGFT rejected the claim vide the communication dated 21.06.2002.

2.10. Notwithstanding the same, a Policy Interpretation Committee was constituted which examined the case of the respondent in its meeting held on 07.10.2002. It was decided that the benefit of duty drawback under the 'deemed export' scheme would be extended to the respondent. Consequently, in supersession of the earlier rejection order dated 21.06.2002 and in the light of the decision of the Policy Interpretation Committee dated 07.10.2002, DGFT vide the order dated 01.11.2002 permitted duty drawback of Rs.2,05,79,740.00 to the respondent. Thereafter cheques for Rs.25,00,000.00, Rs.63,23,575.00, Rs.81,05,583.00 and Rs.56,50,312.00, totalling Rs.2,25,79,470.00 vide endorsements dated 31.03.2003 and 20.05.2003 were issued.

However, it was clarified that duty drawback granted to the respondent would not be treated as a precedent.

2.11. Respondent thereafter submitted representation addressed to the appellants dated 06.06.2003, 14.06.2003, 17.07.2003, 29.10.2003 and 10.08.2004 seeking interest on the duty drawback amount paid on the ground of delayed payment. However, the request for interest made by the respondent was rejected by the DGFT.

3. Aggrieved by rejection of the request for interest on the amount of duty drawback paid, respondent preferred a writ petition before the High Court which was registered as Writ Petition No.45525 of 2004. After hearing the parties, a learned Single Judge of the High Court vide the judgment and order dated 22.09.2005 referred to the notification dated 05.12.2000 and held that respondent was entitled for duty drawback. After observing that there was delay in payment of duty drawback, learned Single Judge held that respondent would be entitled to interest for delayed payment of duty drawback. Since Customs Act, 1962 provides that interest has to be paid in such a case in the range of five percent to thirty percent, learned Single Judge awarded interest at the rate of fifteen percent. Consequently, directions were issued to the

appellants to consider the claim of the respondent for payment of interest on delayed refund from the date of notification dated 05.12.2000 till the date of payment to the respondent within a period of three months.

4. This judgment and order of the learned Single Judge came to be assailed by the appellants before the Division Bench of the High Court which was registered as Writ Appeal No.356 of 2006. Respondent also filed Writ Appeal No.3699 of 2005 assailing the direction of the learned Single Judge to pay interest only from 05.12.2000. The Division Bench took note of the fact that since duty drawback was refunded by the appellants to the respondent, the only question to be considered was the entitlement of the respondent to interest for the delayed refund. In this connection, the Division Bench examined the notification dated 20.08.1998 and observed that this notification had clarified that 'deemed export' would include goods and services of civil construction projects. Thus, duty drawback under the Exim Policy in force was extended even to civil construction. This position was further clarified by the subsequent notification dated 05.12.2000. Such notification was held by the Division Bench to be clarificatory in nature, thus having retrospective effect. After referring to Sections

27A and 75A of the Customs Act, 1962, the Division Bench held that respondent would be entitled to interest after expiry of three months from the date of making the applications for refund of duty drawback. Vide the judgment and order dated 22.08.2008, the Division Bench opined that respondent would be entitled to interest from the date of expiry of three months after submitting the applications for refund of duty drawback in the year 1996 at the rate of fifteen percent as awarded by the learned Single Judge. While the writ appeal of the respondent was allowed, the writ appeal of the appellants was dismissed.

5. Mr. V. C. Bharathi, learned counsel for the appellants submitted a short list of dates and events. He pointed out therefrom that applications filed by the respondent for duty drawback were repeatedly rejected by the DGFT. Notwithstanding such rejection, respondent continued to file one representation after the other claiming duty drawback. It is in such circumstances that a Policy Interpretation Committee was constituted by the DGFT which examined the case of the respondent and vide its decision dated 07.10.2002 decided to extend the benefit of duty drawback to the respondent as a special case. It is in this backdrop that DGFT had passed order dated

01.11.2002 emphasizing that the duty drawback paid to the respondent would not be treated as a precedent. He submitted that duty drawback was extended to the respondent as a special case which was not available to the respondent under the Exim Policy of 1992-1997. In such circumstances, question of awarding any interest to the respondent on the ground of alleged delay in payment of duty drawback did not arise. There was no provision under the Exim Policy of 1992-1997 for payment of such interest. Therefore, learned Single Judge erred in awarding interest to the respondent, that too, at the high rate of fifteen percent.

5.1. He further argued that the Division Bench had fallen in error taking the view that circulars dated 20.08.1998 and 05.12.2000 were clarificatory in nature and therefore would have retrospective effect covering the case of the respondent. According to him, these circulars were issued under the successor Exim Policy, 1997-2002 and thus could not be applied to cases like that of the respondent under the Exim Policy 1992-1997. He, therefore, submitted that the present is a fit case for interfering with the decision of the learned Single Judge as affirmed by the Division Bench.

6. *Per-contra*, Mr. Basuva Prabhu Patil, learned senior counsel for the respondent supported the orders of the learned Single Judge and that of the Division Bench. He submitted that the appellants having granted the benefit of duty drawback to the respondent though belatedly, it is not open to them to now contend that respondent was not entitled to such duty drawback which was only granted as a concession. Admittedly, there was delay in refund of duty drawback. Respondent is, therefore, entitled to interest on such delayed refund which was rightly awarded by the High Court.

6.1. Referring to the provisions of Section 27A of the Customs Act, 1962 (referred to as the 'Customs Act' hereinafter), learned senior counsel submitted that the High Court had taken a rather conservative figure considering the legislative scheme while awarding interest at the rate of fifteen percent to the respondent. He, therefore, submitted that no interference would be called for in the orders of the High Court and that the civil appeal filed by the appellants should be dismissed.

7. Submissions made by learned counsel for the parties have received the due consideration of the Court.

8. Before we examine the decisions of the High Court, it would be apposite to briefly highlight the statutory framework and the concerned Exim Policy.

9. Section 11A of the Central Excise Act, 1944 (briefly 'Central Excise Act' hereinafter) deals with recovery of duties not levied or not paid or short-levied or short paid or erroneously refunded. Relevant for our purpose is sub-section (1) which says that where any duty of excise has not been levied or not paid or has been short levied or short paid or erroneously refunded, for any reason other than the reason of fraud or collusion etc. with intent to evade payment of duty, the Central Excise Officer shall serve notice on the person so chargeable within two years from the relevant date requiring him to show cause why he should not pay the amount specified in the notice. The person chargeable with duty may either before service of notice pay on the basis of his own ascertainment or the duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under Section 11AA. In the event of fraud, collusion etc. the notice period gets extended to five years.

9.1 Duty is cast upon the person liable to pay duty either voluntarily or after determination under Section 11A to pay interest

in addition to the duty under sub-section (1) of Section 11AA. As per sub-section (2), such interest shall not be below ten percent and shall not exceed thirty six percent per annum, as the Central Government may by notification in the Official Gazette fix. Such interest shall be calculated from the date on which the duty becomes due up to the date of actual payment of the amount due.

9.2. Section 11B of the Central Excise Act entitles any person claiming refund of any duty of excise and interest to make an application for refund of such duty and interest before the expiry of one year from the relevant date (prior to 12.05.2000, it was six months instead of one year).

9.3. Section 11BB provides for interest on delayed refund. It says that if any duty ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of the application under sub-section (1) of that section, there shall be paid to such applicant interest at such rate not below five percent and not exceeding thirty percent per annum as for the time being fixed by the Central Government, by notification in the Official Gazette. Prior to 11.05.2001, the rate of interest was not below ten percent. The applicant would be entitled to interest after expiry of three months

from the date of receipt of such application till the date of refund of such duty.

10. Section 27 of the Customs Act deals with claim for refund of duty. As per sub-section (1), any person claiming refund of any duty or interest paid by him or borne by him, may make an application in the prescribed form and manner, for such refund addressed to the designated authority before the expiry of one year from the date of payment of such duty or interest. Explanation below sub-section (1) clarifies that for the purpose of sub-section (1), the date of payment of duty or interest in relation to a person, other than an importer, shall be construed as the date of purchase of goods by such person.

10.1. Sub-section (2) says that if on the receipt of such application the designated authority is satisfied that the whole or any part of the duty and interest, if any, paid on such duty, paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund established under Section 12C of the Central Excise Act. However, as per the proviso, the amount of duty and interest so determined shall be paid to the applicant instead of being credited to the Consumer Welfare Fund if such amount is relatable,

amongst others, to drawback of duty payable under Sections 74 and 75 of the Customs Act.

11. Section 27A of the Customs Act provides for interest on delayed refund. It says that, if any duty ordered to be refunded under sub-section (2) of Section 27 to an applicant is not refunded within three months from the date of receipt of the application, there shall be paid to that applicant interest at such rate not below five percent and not exceeding thirty percent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

12. Chapter X of the Customs Act comprising of Sections 74 to 76 deals with drawback. While Section 74 allows drawback on re-export of duty-paid goods, Section 75 provides for drawback on imported materials used in the manufacture of goods which are exported. On the other hand, Section 75A deals with interest on drawback. Sub-section (1) of Section 75A says that, where any drawback payable to a claimant under Section 74 or Section 75 is not paid within a period of one month (earlier it was two months and prior thereto it was three months) from the date of filing a claim

for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under Section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.

13. In exercise of the powers conferred under Section 3 of the Imports and Exports (Control) Act, 1947, the Central Government notified the Export and Import (Exim) Policy for the period 1992-1997. It came into effect from 01.04.1992 and remained in force for a period of five years up to 31.03.1997.

14. After the enactment of The Foreign Trade (Development and Regulation) Act, 1992, the Exim Policy, 1992-1997 was deemed to have been made under the aforesaid Act. That being the position, we will briefly refer to the said enactment.

15. The Foreign Trade (Development and Regulation) Act, 1992 (briefly 'the 1992 Act' hereinafter) is an act to provide for the development and regulation of foreign trade by facilitating imports into and augmenting exports from India and for matters connected therewith or incidental thereto.

15.1. Section 4 declares that all orders made under the Imports and Exports (Control) Act, 1947 and in force immediately before the commencement of the 1992 Act shall so far as they are

not inconsistent with the provisions of the 1992 Act would continue to be in force and shall be deemed to have been made under the 1992 Act.

15.2. Thus, by virtue of Section 4 of the 1992 Act, the Exim Policy of 1992-1997 continued to be in force and was deemed to have been made under the 1992 Act.

16. Section 5 of the 1992 Act, as it stood at the relevant point of time, dealt with export and import policy. As per Section 5, the Central Government may from time to time formulate and announce by notification in the Official Gazette, the export and import policy and may also, in the like manner, amend that policy.

17. Rule 2(e) of the Foreign Trade (Regulation) Rules, 1993, framed under the 1992 Act, defines the word 'policy' to mean export and import policy formulated and announced by the Central Government under Section 5.

18. Let us now revert back to the Exim Policy, 1992 – 1997. Section 7 of the said policy ascribes meaning to the words and expressions for the purpose of the policy. As per Section 7(13), 'drawback' in relation to any goods manufactured in India and exported means the rebate of duty chargeable on any imported

materials or excisable materials used in the manufacture of such goods in India.

19. Chapter VII of the policy provides for 'Duty Exemption Scheme'. Section 47, which is the first section in Chapter VII, mentions that under the Duty Exemption Scheme, imports of duty free raw materials, components, intermediates, consumables, parts, spares including mandatory spares and packing materials required for the purpose of export production may be permitted by the competent authority under the five categories of licences mentioned in the said chapter, including special imprest licence. As per Section 56 (ii)(3), supplies made to projects financed by multilateral or bilateral agencies like the International Bank for Reconstruction and Development would be entitled to duty free import of raw materials, components, intermediates, consumables, parts, spares including mandatory spares and packing materials to main/sub-contractors for the manufacture and supply of products to such projects.

20. Chapter X introduced the concept of 'deemed exports'. Section 120 defines 'deemed exports' to mean those transactions in which the goods supplied did not leave the country and the payment for the goods was received by the supplier in Indian

rupees but the supplies earned or saved foreign exchange for the country.

21. Under Section 121 (f), supply of goods to projects financed by multilateral or bilateral agencies, such as, the International Bank for Reconstruction and Development under international competitive bidding or under limited tender system would be regarded as 'deemed exports' under the Exim Policy of 1992-1997.

22. Section 122 provides that 'deemed exports' shall be eligible for the benefits in respect of manufacture and supply of goods qualifying as 'deemed exports', including under the Duty Drawback Scheme.

23. In exercise of the powers conferred by Section 75 of the Customs Act, Section 37 of the Central Excise Act and Section 93A read with Section 94 of the Finance Act, 1994, the Central Government has made a set of rules called the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Rule 2(a) defines 'drawback' in relation to any goods manufactured in India and exported, to mean the rebate of duty or tax as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture

of such goods. 'Excisable material' has been defined under Rule 2(b) to mean any material produced or manufactured in India subject to a duty of excise under the Central Excise Act. Likewise, the expression 'imported material' has been defined under Rule 2(d) to mean any material imported into India and on which duty is chargeable under the Customs Act.

23.1. Rule 3 provides for allowance of drawback. Sub-rule (1) says that subject to the provisions of the Customs Act, Central Excise Act, the Finance Act, 1994 and the rules made under the aforesaid three enactments, 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.

23.2. Rule 14 deals with payment of drawback and interest. Sub-rule (1) says that the drawback under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (briefly 'the 1995 Rules' hereinafter) and interest, if any, shall be paid by the proper officer of customs to the exporter or to the agent specially authorized by the exporter to receive the said amount of drawback and interest. Sub-rule (2) clarifies that the officer of customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of

any amount of drawback and interest already paid and may issue a consolidated order for payment. As per sub-rule (3), the date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment by cheque, the date of issue of such cheque; or by credit in the exporter's account maintained with the Custom House, the date of such credit.

24. At this stage, we may mention that in exercise of the powers conferred by Section 27A of the Customs Act, the Central Board of Excise and Customs had issued notification bearing No.32/1995 (NT)-Customs dated 26.05.1995 fixing the rate of interest at fifteen percent for the purposes of Section 27A of the Customs Act. This was notified by the Central Government in the Ministry of Finance, Department of Revenue in the Official Gazette of India dated 26.05.1995.

25. Likewise, in exercise of the powers conferred by Section 11BB of the Central Excise Act, the Central Board of Excise and Customs issued notification No.22/95-Central Excises (NT) dated 29.05.1995 fixing the rate of interest at fifteen percent per annum for the purposes of the said section. This was also notified by the Central Government in the Official Gazette of India on 29.05.1995.

26. Though it may not be necessary, still we may refer to the circulars dated 20.08.1998 and 05.12.2000 issued by the DGFT. Circular dated 20.08.1998 says that representations had been received from individual exporters as well as clarifications sought for by different regional licencing authorities with regard to availability of deemed export benefit for supply of goods and services to civil construction projects. Circular dated 20.08.1998 says that the issue as to whether supply of goods and services to civil construction projects would be entitled for deemed export benefit or not had been examined in detail, whereafter it was clarified that supply of goods under paragraph 10(2)(d) of the Exim Policy would be entitled to deemed export benefit. Therefore, if within the scope of a work of turn-key civil construction project, supply of goods is included then supply of such goods would be entitled to deemed export benefit.

26.1. It appears that representations were continued to be received by the DGFT regarding admissibility of duty drawback on supplies made to turn-key projects, considered as deemed export in terms of the Exim Policy. Circular dated 05.12.2000 mentions that the matter was deliberated upon by the Policy Review Committee. It was noted that it was not possible for a single

contractor to manufacture himself all the items required for execution of such projects. Hence certain items, either imported or indigenous, had necessarily to be procured from other sources. It was, therefore, clarified that all such directly supplied items, whether imported or indigenous, and used in the projects, the condition 'manufactured in India', a pre-requisite for grant of deemed export benefit, was satisfied in view of the fact that such activities being undertaken at the project site constituted 'manufacture' as per the definition provided in the Exim Policy. Accordingly, it was clarified that the duties, customs and central excise, suffered on such goods should be refunded through the duty drawback route. Referring to the previous circular dated 20.08.1998, it was further clarified that excise duty paid on supply of inputs, such as, cement, steel etc., would be refunded through the duty drawback route in the same manner as in any other case of excisable goods being supplied to any other project qualifying for deemed export benefit, subject to the project authority certifying the receipt and use of such inputs in the project.

27. As already noted above, a Policy Interpretation Committee was constituted. The said committee held a meeting on 07.10.2002, chaired by the DGFT. One of the agenda items

deliberated upon in the said meeting was the claim of the respondent regarding inclusion of excise duty component in the price quoted before the project authority as a case of deemed export and refund of the same through the duty drawback route. The Policy Interpretation Committee discussed the case of the respondent and opined that in case any such firms were still competitive and able to supply goods at international prices despite including the component of excise duty in the price quoted before the project authority, the deemed export benefit could not be denied to such firms. Hence, the committee decided to permit deemed export benefit even in cases where the excise duty component was factored in the pricing quoted provided other conditions of deemed export benefit were adhered to.

27.1. From a perusal of the minutes of the meeting of the Policy Interpretation Committee held on 07.10.2002, it is evident that the committee had opined to extend the deemed export benefit to those firms which included excise duty component in the tender pricing quoted before the project authority such as the respondent. There is nothing in the minutes to indicate that such benefit was being extended to the respondent as a one off case or by way of concession.

28. Based on the minutes of the Policy Interpretation Committee meeting held on 07.10.2002, DGFT issued letter dated 01.11.2002, a copy of which was marked to the respondent, superseding the previous rejection order dated 21.06.2002 and allowing duty drawback to be paid to the respondent for materials/goods, such as, steel, cement etc., used in the civil works of Koyna Hydro Electric Project. The amount of drawback refundable to the respondent was quantified at Rs.2,05,79,740.00. In the said letter, it was, however, mentioned that grant of drawback should not be treated as a precedent. It was thereafter that cheques were issued paying the aforesaid amount of duty drawback to the respondent. At that stage, respondent submitted representations contending that there was delay in the refund of drawback and therefore, it was entitled to interest from the relevant date at the rate of fifteen percent in terms of the notification No.22/95 dated 29.05.1995 (we may mention that the respondent had placed reliance on the aforesaid notification which fixed interest at the rate of fifteen percent for delayed refund of duty under Section 11BB of the Central Excise Act). However, such representations were rejected by the DGFT on 10.07.2003 and 06.08.2003 respectively. In the rejection letter dated 10.07.2003, respondent was informed by the office of DGFT that there was no

provision for payment of interest on the deemed export duty drawback. Therefore, the request for payment of interest could not be agreed upon.

29. Learned Single Judge referred to the circular dated 05.12.2000 and observed that pursuant thereto appellants had paid the duty drawback to the respondent. However, there was delay in payment of duty drawback at least from the date of the clarificatory circular dated 05.12.2000. Therefore, respondent would be entitled to interest from the date of the clarification till the date of payment. After observing that the Customs Act provides for interest on delayed refund within the range from five percent to thirty percent, learned Single Judge directed the appellants to pay interest on the delayed refund from the date of the clarificatory circular dated 05.12.2000 till the date of payment within a period of three months.

30. Appellants filed Writ Appeal No.356 of 2006 assailing the aforesaid decision of the learned Single Judge. On the other hand, respondent also filed a writ appeal being Writ Appeal No.3699 of 2005 assailing the directions of the learned Single Judge to pay interest only from the date of the circular dated 05.12.2000.

30.1 Before the Division Bench, it was contended on behalf of the appellants that it was only under the Foreign Trade Policy, 2004-2009 that for the first time payment of simple interest at the rate of six percent per annum in the event of delay in refund of duty drawback was provided. There was no provision for payment of interest on delayed refund of duty drawback on deemed export prior thereto. Therefore, respondent was not entitled to interest even from 05.12.2000 as directed by the learned Single Judge. It was canvassed before the Division Bench on behalf of the appellants that only due to magnanimity on the part of the Central Government refund of duty drawback under deemed export was paid to the respondent. As such, refund would not carry any interest.

30.2 The Division Bench repelled such contentions advanced on behalf of the appellants and held that in view of the circular dated 05.12.2000, it was clarified that even civil construction works were entitled to the benefit of deemed export under the Exim Policy. After saying so, the Division Bench noted that as a matter of fact, an amount of Rs.2,05,79,740.00 was paid to the respondent as duty drawback. Thereafter, the Division Bench analysed the circular dated 05.12.2000 and upon such analysis it was observed

that the position *vis-à-vis* refund of duty drawback in civil construction work treating it as deemed export was clarified in an earlier circular dated 20.08.1998. Thus, according to the Division Bench, by the year 1998 itself, DGFT had clarified that civil construction work was entitled to the benefit of duty drawback as deemed export. Having held so, the Division Bench posed a question as to whether the respondent would be entitled to interest after expiry of three months from the date of the applications for refund of duty drawback? Corollary to the above question was an ancillary question as to whether a clarificatory or declaratory notification or circular would have retrospective operation? After referring to decisions of this Court reported in 1993 Supplementary (3) SCC 234 *S. S. Grewal versus State of Punjab*, (1995) 2 SCC 630 *Rajagopal Reddy (dead) by Lrs. Vs. Padmini Chandrasekharan (dead) by Lrs.*, and (2004) 8 SCC 1 *Zile Singh versus State of Haryana*, the Division Bench opined that the minute the Exim Policy came into force the benefit of duty drawback automatically became available to the respondent and that the clarification was only with regard to the doubts expressed in some quarters as to whether civil construction works were also entitled to such benefit. By virtue of the two circulars dated 20.08.1998 and 05.12.2000, no new right or benefit came to be created; those two circulars were

clarificatory in nature only clarifying that the benefit under the Exim Policy 1992-1997 was available to civil construction as well. Therefore, such benefit would take effect from the date of the Exim Policy. It was thereafter that the Division Bench posed the further question as to what would be the rate of interest on the delayed refund. In this connection, the Division Bench referred to Sections 27A and 75A of the Customs Act and came to the conclusion that the date of payment of interest would have to be on expiry of the period of three months from the date of making an application for refund of duty drawback. The Division Bench held that the respondent would be entitled to interest from the date of expiry of three months after submission of applications for refund back in the year 1996 till the time the payment was made at the rate of fifteen percent as awarded by the learned Single Judge. Consequently, the appeal of the appellants was dismissed while the appeal of the respondent was allowed.

31. Reverting back to the Exim Policy of 1992-1997, we have already noted about the Duty Exemption Scheme. We have noted that under the Duty Exemption Scheme, import of duty free raw materials, components, intermediates, consumables, parts, spares including mandatory spares and packing materials

required for the purpose of export production could be permitted by the competent authority under five categories of licences mentioned in Chapter VII including special imprest licence. Section 56 provided that a special imprest licence was granted for the duty free import of raw materials, components, consumables, parts, spares including mandatory spares and packing materials to main/sub-contractors for the manufacture or supply of products when such supply were made to projects financed by multilateral or bilateral agencies, such as, the International Bank for Reconstruction and Development under international competitive bidding or under limited tender system.

31.1 In Chapter X 'deemed export' has been defined. It is a transaction in which the goods supplied do not leave the country and the payment for the goods is received by the supplier in Indian rupees, but the supplies earn or save foreign exchange for the country. Section 121 declares that the categories of supply of goods mentioned in the said section would be regarded as 'deemed export' under the Exim Policy provided the goods were manufactured in India and the payment was received in Indian rupees. This included supply of goods to projects financed by multilateral or bilateral agencies or any other agency that may be

notified by the Central Government, such as, the International Bank for Reconstruction and Development under international competitive bidding or under limited tender system in accordance with the procedures of those agencies.

31.2 Section 122 clarifies that deemed export would be eligible for benefits under the Duty Drawback Scheme in respect of manufacture and supply of goods by treating those as deemed export.

32. That apart, as already mentioned in the earlier part of the judgement, the Explanation below sub-section (1) of Section 27 of the Customs Act clarifies that the expression 'the date of payment of duty or interest' in relation to a person other than an importer shall be construed as 'the date of purchase of goods' by such person.

33. Therefore, on a conjoint and careful reading of the relevant provisions of the Exim Policy, 1992-1997 in conjunction with the Central Excise Act and the Customs Act, it is evident that supply of goods to the project in question by the respondent was a case of 'deemed export' and thus entitled to the benefit under the Duty Drawback Scheme. The language employed in the policy

made this very clear and there was no ambiguity in respect of such entitlement.

34. Even if there was any doubt, the same was fully explained by the 1995 Rules. In fact, under the definition clause of the 1995 Rules, duty drawback, in relation to any goods manufactured in India and exported has been defined to mean the rebate of duty or tax chargeable on any imported materials or excisable materials used or taxable services used in the manufacture of such goods. In the preceding paragraphs, we have noted the meaning of the expressions 'excisable materials' and 'manufacture'.

34.1 Rule 3 of the 1995 Rules makes it abundantly clear that 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. Further, Rule 14 provides for payment of drawback and interest.

35. It was, therefore, not correct on the part of the appellants to contend that there was no provision for payment of interest on delayed refund of duty drawback. That apart, it is wholly untenable for the appellants to contend that refund of duty drawback was granted to the respondent as a concession, not to be treated as a precedent. As we have seen, respondent is entitled

to refund of duty drawback as a deemed export under the Duty Drawback Scheme. The applications for refund were made in 1996. Decision to grant refund of duty drawback was taken belatedly on 07.10.2002 whereafter the payments were made by way of cheques on 31.03.2003 and 20.05.2003. Admittedly, there was considerable delay in refund of duty drawback.

36. As we have already examined, under sub-section (1) of Section 75A of the Customs Act, where duty drawback is not paid within a period of three months from the date of filing of claim, the claimant would be entitled to interest in addition to the amount of drawback. This section provides that the interest would be at the rate fixed under Section 27A from the date after expiry of the said period of three months till the payment of such drawback. If we look at Section 27A, the interest rate prescribed thereunder at the relevant point of time was not below ten percent and not exceeding thirty percent per annum.

37. The Central Board of Excise and Customs vide its notification bearing No.32/1995 (NT) – Customs dated 26.5.1995 had fixed the rate of interest at fifteen percent for the purpose of Section 27A of the Customs Act. The High Court while awarding interest at the rate of fifteen percent per annum, however, did not

refer to such notification; rather, there was no discussion at all as to why the rate of interest on the delayed refund should be fifteen percent. Therefore, at the first glance, the rate of interest awarded by the High Court appeared to be on the higher side and without any reason.

38. Be that as it may, having regard to our discussions made above, we have no hesitation in holding that the respondent was entitled to refund of duty drawback. Appellants had belatedly accepted the said claim and made the refund. Since there was belated refund of the duty drawback to the respondent, it was entitled to interest at the rate which was fixed by the Central Government at the relevant point of time being fifteen percent.

39. That being the position, we find no good reason to interfere with the judgment and order of the Division Bench of the High Court dated 22.8.2008. There is no merit in the appeal, which is accordingly dismissed. No costs.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
05.02.2024