IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75458 of 2014

(Arising out of Order-in- Original No. 01/Commr./CE/kol-v/Adjn/2014 dated 08.01.2014 passed by the Commissioner of Central Excise Kolkata V Commissionerate Adjudication Branch 180, Shantipally, Rajdanga Main Road, Kokata-700 107)

M/s. Flexible Hose Industries, **: Appellant**
Suit No. 11, 12th Floor,
33A, Jawaharlal Nehru Road, Kolkata-700 071

VERSUS

Commissioner of Central Excise, Kolkat-V **: Respondent**
180, Shantipally, Rajdanga Main Road,
Kokata-700 107)

APPEARANCE:

Shri K. K. Sanyal, Consultant for the Appellant

Shri K. Chaudhuri, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76370/2024

DATE OF HEARING / DECISION: 28.06.2024

Order: [PER SHRI K. ANPAZHAKAN]

The Appellant is a manufacturer-exporter of PVC-coated polyester fabric hose. During the period from January 2006 to December 2006, the Appellant exported six consignments of their manufactured product namely PVC Coated Polyester Fabric Hose vide Shipping Bills no. (i) 5284387 dated 30.01.2006, (ii) 9368839 dated 05.05.2006, (iii) 5303758 dated 06.05.2006, (iv) 5323791 dated 03.08.2006. (v) 5351525 dated 13.12.2006 and (vi) 5353545 dated 21.12.2006 under claim of drawback at brand rate. Since the Appellant was not satisfied with the existing rate of drawback for the subject export items determined by the Government under Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (hereinafter referred to as 'Drawback Rules, 1995'), the Appellant claimed that they have applied for fixation of special rate of drawback under Rule 6(1)(a) of the Drawback Rules 1995.

2. A Show Cause Notice was issued to the appellant proposing to reject the request of the appellant for fixation of special rate of drawback on the following grounds:

(i) No evidence of receipt of the application in the Divisional office has been found. Hence it cannot be ascertained whether the application was filed within 30 days from the date of shipment.

(ii) The application were not submitted in the Commissionerate Office which is mandatory as per Circular No. 14/2003-Cus. dated 06.03.2003.

(iii) The exporter did not submit letter for condonation of delay in filing the application.

2.1. The Notice was adjudicated by the Ld. Commissioner vide the impugned Order-in-Original dated 08.01.2014 wherein the Ld. Commissioner has rejected all the applications of the assessee on the grounds of non-fulfilment of basic requirements. Aggrieved against the rejection of their request for fixation of special rate of brand-rate, the appellant filed this appeal.

3. The Appellant submits that they have filed the applications within the stipulated time in the Divisional Office; later, when they realized that the application has to be filed at the earmarked unit in the Headquarters of the Commissionerate, as provided in Circular No. 14/2003-Cus. dated 06.03.2003, they have filed the photo copies of the applications filed earlier, with the Headquarters again vide letter dated 28.05.2012. The Appellant submits that all the three copies of the application have been filed before the Divisional Office assuming that one copy would be sent to the Headquarters after verifying the data by the Range Office. They submit that if there is a delay in filing the application, the Ld. Commissioner should have condoned the delay which is only a procedural lapse. Further, they submit that there is no limitation of time provided anywhere in the Customs Act, 1962 in filing the claim of drawback.

3.1. Accordingly, they prayed for setting aside the impugned order, rejecting their application for fixation of special rate of brand-rate.

4. The Ld. Authorized Representative appearing for the Revenue submits that Rule 6(1)(a) prescribes a specific time-limit of sixty days from the relevant date, for filing the application for fixation of special rate of drawback. He submits that an assessee has to apply before the Commissioner of Central Excise having jurisdiction over the Manufacturing Unit within sixty days from the relevant date. He also pointed out that the Ld. Commissioner can condone the delay up to a further period of 30 days on sufficient cause shown by the assessee for the delay in filing the application; in this case, the appellant

could not file the brand-rate fixation application within sixty days or within ninety days, including the condonable period. Accordingly, he submits that the application filed by the Appellant on 28.05.2012 is beyond the time-limit prescribed in Rule 6(1)(a) of the Drawback Rules, 1995 and hence the ld. adjudicating authority has rightly rejected their application. In view of the above, he pleaded for rejecting the application of the appellant.

5. Heard both sides and perused the appeal documents.

6. We observe that the Appellant has exported 6 consignments vide shipping bills dated 30.01.2006, 05.05.2006, 06.05.2006, 03.08.2006, 13.12.2006 and 21.12.2006 under the claim of drawback at brand-rate. Since the Appellant was not satisfied with the existing rate of drawback, they claimed to have filed an application for fixation of special rate of drawback under Rule 6(1)(a) of the Drawback Rules, 1995.

6.1. However, the appellant could not produce any evidence to the effect that they had filed application with the Commissioner of Central Excise within the time-limit stipulated in Rule 6(1)(a) for fixation of special rate. In their submission, the Appellant stated that they have inadvertently filed all the three applications in the Divisional Office and they were under the impression that one of the application forms would be transferred to the Headquarters Unit by the Divisional Office after verifying the data by the Range Office. However, we observe that the Appellant could not produce any evidence to the effect that they have filed all the three copies of the applications in the Divisional Office within the stipulated time-limit as claimed by them.

6.2. We observed that Rule 6(1)(a) provides for fixation of special rate of brand-rate when an assessee is not satisfied with the brand-rate fixed under Rule 3 of the Drawback Rules, 1995. For the sake of ready reference, the said rule is reproduced below:

> ***"RULE 6. Cases where amount or rate of drawback has not been determined.***-
> *(1) [(a) Where no amount or rate of drawback has been determined in respect of any goods, any manufacturer exporter or exporter of such goods may, within* ***sixty days*** *from the date relevant for applicability of the amount or rate of drawback in terms of sub-rule (3) of Rule (5), apply in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, having jurisdiction over the manufacturing unit, of the manufacturer exporter or, of the supporting manufacturer, as the case may be, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components :*
>
> *Provided that such Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, if he is satisfied that the manufacturer exporter or exporter was prevented by sufficient cause from filing the application within the aforesaid time allow such manufacturer or exporter to*

> *file such application within a further period of* ***thirty days****."*

6.2.1. We observe that Rule 6(1)(a) provides a time-limit of sixty days from the relevant date for filing the application for fixation of special rate. The Commissioner can condone the delay up to a further period of thirty days. However, in this case, we observe that all the six consignments of exports were made in the year 2006. However, the application for fixation of drawback was filed before the proper authority only in 2012 vide letter dated 28.05.2012. There is no evidence available on record to substantiate the claim of the Appellant that they have filed the applications in the Divisional Office within the time-limit prescribed under Rule 6(1)(a). During the time of hearing also, the Appellant was asked to produce evidence if any available with them to substantiate the claim that they have filed all the three copies of the applications in the Divisional Office within the stipulated time along with the acknowledgement for receipt of the same in the Divisional office. However, the Appellant could not produce any such evidence that the claims were submitted in the Divisional Office within the stipulated time limit. We observe that the adjudicating authority also has given a categorical finding on this aspect in the impugned order, which is reproduced below for ready reference:

> *7. However, from the records it is seen vice. It simply appears that the assessee is trying to overcome their lapses in the garb of non-existent documents. From records it is clear that the assessee at no course of time submitted the application within the time frame prescribed in this regard with the proper officer. As a matter of fact,*

it is also seen that notice submitted photocopies of 3(three) applications on 28-05-2012 together with relevant documents stated to have been submitted earlier with Behala Division of Kolkata –V Commissionerate, after a series of communication were made with the said notice form the end of the Assistant Commissioner of Central Excise, Behala Division, Kolkata-V Commissionerate requesting them to submit the supporting documents to be attached along with the Brand Rate application in terms of Circular No. 14-Cus/2003 dated 06-09-2013 following receipt of a letter from the Assistant Commissioner of Customs, Drawback Department, Customs Hose, Kolkata vide his letter F. No. S.34M-192/07 DBK(Pt.49) dated 07-12-2007 together with a copy of the letter dated 27-09-2007 from Bulbul Shah, Proprietor of M/s Flexible Hose industries addressed to the Assistant Commissioner of Behala Division, 169, A.J.C. Bose Road, Kolkata-700014, applications were submitted earlier to the Division Office of Behala Division of Kolkata-V Commissionerate.

7.1. It has been further seen that the assessee at no course of time has submitted any application for condonation of delay, giving reasons for the same. Limitations in the instant case has been prescribed in order to facilitate faster delivery of incentives for export and also enable the department to carry out any investigation it deems fit before considering a case. In the event of any delay provision for condonation of delay has been provided in the event of the notice submitting an application before the competent authority giving reasons of delay which was beyond the control of the beneficiary.

7.2. In view of the above discussion, it appears that the said notice did not fulfil the basic requirement i.e., the submission of the application

> *for fixation of Brand Rate to the proper authority, as prescribed by the law and within the period of limitations. They not also produce any document evidencing submission of any such application or condonation of delay at any time during the proceedings.*

6.2.2.We agree with the above findings of the adjudicating authority. We observe that the time-limit prescribed under Rule 6(1)(a) is a mandatory condition to be fulfilled for consideration of the application for fixation of special rate of drawback. Since the Appellant has not filed the application within the mandatory time-limit stipulated in Rule 6(1)(a) or within the condonable period provided in the proviso to Rule 6(1)(a), we hold that the Appellant has not filed the application for fixation of special rate of drawback within the time-limit as stipulated in Rule 6(1)(a). Accordingly, we hold that the ld. adjudicating authority has rightly rejected their application for fixation of special rate of drawback vide the impugned order.

7. In view of the above, we uphold the impugned order and reject the appeal filed by the Appellant.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp