

Zenith Computers Ltd. Vs. Union of India (Uoi)

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Court : Mumbai

Decided On : Dec-15-2003

Reported in : 2004(1)BomCR473; 2004(164)ELT24(Bom)

Judge : R.M.S. Khandeparkar and ;J.P. Devadhar, JJ.

Acts : Customs and Central Excise Duties Drawback Rules, 1971 - Rules 3, 6 and 15

Appeal No. : Writ Petition No. 3502 of 1991

Appellant : Zenith Computers Ltd.

Respondent : Union of India (Uoi)

Advocate for Def. : R.V. Desai, Sr. Counsel and ;N.V. Masurkar, Adv., i/b., T.C. Kaushik, Adv.

Advocate for Pet/Ap. : Zal Andhyarunjina, Adv., i/b., Pardiwala & Co.

Disposition : Petition dismissed

Judgement :

R.M.S. Khandeparkar, J.

1. Heard the learned Advocate for the parties. Perused the records. The Petitioners challenge the orders passed by the Respondents rejecting their

applications claiming refund in the nature of drawback.

2. The Petitioners carry on the business of manufacturing computers and peripherals in their factory at 29 M.I.D.C., Industrial Estate, Central Road, Andheri (West) Bombay. The Petitioner No. 2 is a shareholder of the said company.

3. It is the case of the Petitioners that they are one of the leading Computer manufacturers in India and during September, 1989 they were flooded with a series of export orders mainly from USSR. The first Petitioners did not have any experienced person or an Export Department to handle these export orders and particularly the post-shipment formalities and, therefore, they appointed a Senior Export Manager in October, 1989 for handling all such procedural work. However, the said officer left the services of the first Petitioner-Company on 31st December, 1989. The Petitioners prime concern at that, relevant time was to execute the export order and as the orders placed were voluminous and heavy, so much so that no airline was willing to export the transportation of the entire consignment in one lot. The orders consisted of several systems of con-figerative, peripherals, spares, consumables, softwares, etc. and were required for the net working of a single area of operation and that constituted one composite unit for the first phase of the buyers automation programme and despite the fact that the buyers wanted the entire consignment in one lot, none of the airline was willing to transport the same in one lot, as the entire lot was voluminous and heavy. Therefore, the Petitioners were forced to despatch the goods in four lots under four different shipping bills, the same were followed by two more consignments of exports.

4. The grievance of the Petitioners is that even though the applications claiming the refund as drawbacks were filed beyond the period of thirty days, the Petitioners had disclosed sufficient cause for not filing the said applications within the period of thirty days and, therefore, the Respondents ought to have condoned the delay in exercise of powers under Rule 6 of Customs and Central Excise Duties Drawback Rules, 1971, hereinafter called as 'the said Rules'. Even otherwise, considering the fact that the applications were filed beyond the period of limitation for the reasons beyond the control of the Petitioners and even though they were not maintainable in terms of the provisions contained in Rule 6 of the

said Rules, nothing prevented the Respondents from condoning the delay in filing those applications in exercise of their powers under Rule 15 of the said Rules and to grant refund claim of the Petitioners.

5. The Petitioners by their letter dated 18th January, 1990 addressed to the second Respondent while enclosing the copy of the contract with the Russian party had pointed out that they were preparing DBK statements to complete the contract and as that was a laborious and time consuming exercise, especially as they were new in the field of exports, they had anticipated that the statements would be ready within six to eight weeks time and, therefore, they had requested the second Respondent to grant them time of sixty days, instead of thirty days, i.e. up to 10th March, 1990 for submitting all the statement's in relation to the export under Shipping Bill Nos. 062925, dated 21-10-1989, 062996, dated 21-10-89, 070791, dated 29-11-1989 and 081161, dated 10-1-1990. The Respondents informed Petitioners through their letter dated 14-2-1990 to arrange with the jurisdictional Collector for early verification of data. Further by letter dated 16th February, 1990, the first Petitioners again requested for time up to 10th March, 1990 for submitting the statements in respect of their claim for refund in the nature of drawback, while pointing out that of the export orders had been fulfilled on 29th December, 1989.

6. By a letter dated 3rd March, 1990, the Petitioners submitted the claim for refund in the nature of drawback in respect of the two shipping bills dated 21st October, 1989. On 10th March, 1990 the first Petitioners submitted two more applications in respect of the said shipping bills dated 29th November, 1989 and 12th January, 1990. Under the letter dated 30th March, 1990, the first Petitioner submitted another application for the drawback in respect of the shipping bills dated 16th December, 1989. Third Respondent by a letter dated 22nd March, 1990 informed the Petitioners that the application dated 3rd March, 1990 was in respect of the shipping bill dated 21st October, 1989 and the same had been received by the Respondents' office on 15th March, 1990 and, therefore, there was delay of 115 days and hence it was rejected as time-barred.

7. On 30th March, 1990 and 5th April, 1990, the Petitioners by their letters submitted two drawback applications in respect of three shipping bills dated 16th December, 1989, 26th December, 1989 and 6th February, 1990. By a letter dated 19th April, 1990 the Petitioners sought to point out the reasons for the delay in submitting the applications to be lack of experience and expertise in the field of export and post-export formalities and prayed for condonation of delay. By a letter dated 15th May, 1990 the Petitioners sought to explain the above facts to the Member (Customs) of the Central Board of Excise and Customs and requested for condonation of delay in submitting the applications. In reply thereto, the Respondents under letter dated 13-6-1990 informed the Petitioners that in terms of letter of the Ministry dated 22-3-1990, the power to condone is limited to thirty days under Rule 6 of the said Rules and the request for condonation of delay beyond sixty days from the date of exports could not be acceded to. The Assistant Collector of Customs, Drawback Department, Bombay by letter dated 13th August, 1990 informed the first Petitioners that in view of the letter dated 22nd March, 1990, the application of the Petitioners dated 3rd March, 1990 was rejected. Further by letters dated 13th and 17th August, 1990 the Assistant Collector of Customs informed that the application dated 10th March, 1990 and 30th March, 1990 were also disposed of being time-barred.

8. The Petitioners by their letter dated 23rd August, 1990 made a representation to the Secretary, Department of Finance requesting him to consider their case sympathetically and to condone the delay in filing application and to grant them drawback by reopening the case. The third Respondent by his letter dated 10th September, 1990 and 7th November, 1990 informed that the two applications dated 5th April, 1990 were rejected being time-barred and further by a letter dated 8th March, 1991, the Deputy Secretary of the Drawback Department informed that the application of the Petitioners was beyond the period of sixty days and the delay could not be condoned in terms of Rule 6 of the said Rules. Further representation was made by the Petitioners to the Minister of Finance for his intervention to get the cases reopened and reconsidered but without any favourable result.

9. Rule 3 of the said Rules specifically provides that the drawback can be allowed with respect to the goods, subject to the provisions of the Customs Act, Excise Act and the said Rules. The authorities acting under the said Acts and the said Rules while dealing with the claim relating to drawback have to exercise their powers with due regard to the provisions of the said Rules and cannot act either in contravention of the said Rules or in excess of the powers given to them under the said Rules. Even otherwise, it is well, established principle of law that when a statute requires a thing to be done in the prescribed manner or form, the same has to be done accordingly and not in any other manner.

10. Rule 6(1)(a) prescribes the period of thirty days from the date of export for filing an application to claim the refund in the nature of drawback. The period of thirty days has to be counted from the date of the export of goods. In case of failure to file such an application within thirty days, further period of thirty days is made available under the proviso to Clause (a) of the Sub-rule (1) of Rule 6, subject to the condition that the Applicant shall satisfy the authorities that he was prevented from sufficient cause to file the application within the initial period of thirty days. On such satisfaction of the authorities, the delay can certainly be condoned provided the applicant files such application within the said grace period of thirty days. The said Rule 6(1)(a) of the said Rules reads thus :-

'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 or exporter of such goods may, within thirty days from the date of export of such goods apply in writing to the Central Government for the determination of the amount or rate of drawback therefor, 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 the Central Government may, if it is satisfied that the manufacturer 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.'

11. The Rule 6, therefore, clearly requires the concerned party to claim refund in the nature of drawback within thirty days from the date of export of any goods and in case the applicant is prevented by sufficient cause from filing such an application within the said period, then such application can be filed within the period of next thirty days, i.e. within 60 days from the date of export. Undoubtedly, in case of application being not filed during the initial period of thirty days but is filed within the following period of 30 days, the applicant is required to make out a case of sufficient cause to the satisfaction of the authorities dealing with such application for condonation of delay. The term 'sufficient cause' has not been defined under the said Rules or the Customs Act, 1962, but by various judicial pronouncements, it is well settled that the same should disclose a cause which can be described as one beyond the control of the party invoking the aid of the provision regarding the condonation of delay on the ground of sufficient cause. A cause which prevents a person from approaching the authorities within the prescribed time may be a 'sufficient cause'. Obviously, while considering of the same, it is the test of reasonable and prudent person in normal circumstances which has to be applied. Certainly, a cause for delay which the party could have avoided by due care and caution or attention, could hardly be called as 'sufficient cause'. At the same time, the terms 'sufficient cause' has to receive liberal construction and should be applied in a meaningful manner to subserve the ends of justice while bearing in mind that it should not result in rewarding the party for its utter negligence or lack of bona fide.

12. Bearing in mind the provisions of law in Rule 6 and applying the same to the facts of the case, it is apparent that all the applications were filed beyond the period of thirty days and even beyond 60 days. No doubt, there is dispute between the parties as regards the four applications in relation to the exact date of submission of those applications to the Respondents nevertheless, however, it is not in dispute that those were also filed beyond 60 days. The same is revealed from the following chart :-

Sr. No.	Date of Export	Date of Application	Date of Submission	Delay
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1.21-10-19893-3-199015-3-19901152.21-10-19893-3-199015-3-19901153.29-11-198910-3-199030-4-1990814.12-1-199010-3-199030-4-1990785.16-12-198930-3-199019-4-1990736.26-12-19895-4-199019-4-1990707.6-2-19905-4-199019-4-199042

13. Undoubtedly, the Petitioners have claimed to have submitted their applications dated 10-3-1998 on 21-3-1990, application dated 30-3-1990 on 5-4-1990 and one dated 5-4-1990 on 8-4-1990. However, no material in support thereof has been placed on record nor even a statement on oath by the Petitioners is to be found on record in that regard. In other words, there is no dispute that all the applications were filed beyond the period of sixty days from the date of exports.

14. Perusal of the copies of the application dated 3-3-1990, 10-3-1990 and 30-3-1990 Exhibits D, D1, E2 and F discloses that apart from enumeration of list of documents which were filed along with those applications, the same did not disclose any cause for delay in filing the said applications. There was not even a whisper about the fact that the applications were filed beyond the prescribed period. It was so inspite of the full knowledge to the Petitioners that the applications were required to be filed within the period of thirty days from the date of export. Apart from the fact that ignorance of law is no excuse, the letters dated 18-1-1990 and 16-2-1990 clearly reveal that the Petitioners were fully aware of their obligations under the said Rules and the procedure provided for claiming refund in the nature of drawback and yet while filing the application beyond the period of limitation, no cause for delay was disclosed, leave aside 'the sufficient cause'. It was only on 30-3-1990 for the first time after filing the said applications that the Petitioners thought of requesting for condonation of delay in relation to the applications pertaining to the export dated 15th December, 1989 and thereafter on 5-4-1990 in relation to the export dated 16-12-1989. Further by a letter dated 19-4-1990 in relation to all the six exports and a letter dated 15-5-1990 in respect of all the 7 exports, the cause of delay was sought to be disclosed by the Petitioner's - firstly being that they had to meet the deadline stipulated by the importer and, therefore, they had fully concentrated on manufacture and export of product, secondly that they had no expertise and experience in post-shipment formalities and were new in the field of exports, and thirdly that their costing was based on

the presumption that they would get the drawback and in case the same is refused, they would incur heavy losses.

15. As already noted above, the authorities are empowered to condone the delay in exercise of their powers under Rule 6 provided that the application is filed within the period of sixty days from the date of export. There is no power vested in the authority under the Rule 6 to condone the delay beyond the period of sixty days. Rule 3 of the said Rules empowers the authorities to deal with the claim of refund in the nature of drawback 'subject to the provision, of the said Rules.' At the same time, Rule 15 clearly reveals that on failure to comply with the provisions of the said Rules, the applicant would be disentitled to claim the refund, unless relaxation is granted under the said provision. All these provisions of law in the said Rules apparently reveal that the provisions relating to the procedure for claim of refund in the nature of drawback provided under the said Rules are required to be complied with necessary precision, failing which the applicant may lose claim for drawback.

16. It is well settled that the statutory bodies cannot travel beyond the scope of power delegated to them under the statute under which they are created or authorised to act. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow, (vide : Sharif-ud-Din v. Abdul Gani Lone reported in : [1980]1SCR1177). A requirement of a particular form or manner of performance of an act is to be held as mandatory if the statutory provisions prescribe penalty for the failure to comply with such obligation (vide Banarsi Das v. Cane Commissioner, Uttar Pradesh and Anr. reported in : AIR 1963 SC1417 . Equally, it is well settled that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. In fact in such cases, other methods of performance are necessarily forbidden (vide : State of Uttar Pradesh v. Singhara Singh and Ors. reported in : [1964]4SCR485 and A.K. Roy and Anr. v. State of Punjab and Ors. reported in : 1986 CriLJ2037).

17. Bearing in mind the above well settled principles of law and the provisions of the said Rules to the facts of the case in hand, it is apparent that the authorities could not have allowed the applications filed by the Petitioners in exercise of their powers under Rule 6 as those applications were filed beyond the period of sixty days. The question of condonation of delay by the authorities could have arisen only if the applications were filed within the period of sixty days and not otherwise, as on expiry of the period of sixty days, the authorities have no power to condone the delay under Rule 6 of the said Rules.

18. It is to be noted that at no point of time, prior to filing of the petitioner, the Petitioners had made any request to the authorities for exercise of powers under Rule 15 and to grant to the Petitioners, the relaxation and/or exemption from the compliance of the said Rules. All throughout, the request of the Petitioners was for condonation of delay in filing their applications. The exercise of power of condonation of delay under Rule 6 is not the same thing as the exercise of power under Rule 15 of the said Rules for relaxation or exemption from the applicability of the provisions of the said Rules under Rule 15.

19. An applicant approaching the Respondents with request for relaxation in terms of Rule 15 has to make out a case relating to the reasons beyond the control of the applicant which had contributed for failure of such applicant to comply with the provisions of the said Rules. Once it is clear that the Petitioners had not approached the Respondents with the said request, the question of the Court giving directions to the Respondents to consider the application of the Petitioners in terms of Rule 15 does not arise.

20. We are aware that in one of the applications namely the application dated 15th May, 1990 there was reference to Rule 16. Perhaps the Petitioner wanted to refer to Rule 15 and might be that either by oversight or on account of typing mistake, it was mentioned as Rule 16 instead of Rule 15. Nonetheless, the fact remains that the said application was also for condonation of delay. The question of condonation of delay can arise for the purpose of entertaining the application for refund in the nature of drawback, if the applicant has a subsisting right to claim such refund. But when such right ceases to exist on account of failure to comply

with the provisions of law, there cannot be condonation of delay but it is only by way of relaxation from the applicability of the provisions of the said Rules, that could revive the entitlement for refund in the nature of drawback.

21. It is to be noted that even the application dated 27th August, 1991 does not satisfy the requirement of Rule 15. In fact, the said application was essentially with the request for condonation of delay. It was the contention of the Petitioners in para 6 thereof that the application was filed within one month from the letter dated 14th February, 1990 of the Department. Certainly, the period of 30 days or that of 60 days is to be counted from the date of the export and not from the date of any letter from the Department. The letter dated 14-2-1990 from the Department had nothing to do with the date of export by the Petitioners nor by the said letter the period of limitation was extended nor it could have been extended. In para 7 of the said application, it was claimed that the first three claims were filed within sixty days from the completion of the export of the last consignment of one contract. Here again, the period of limitation prescribed under the Rule 6 has nothing to do with the contract regarding the export but it essentially refers to the date of actual export and admittedly, the applications were filed beyond the period of sixty days from the date of each of the exports. In other words, there was no question of condonation of delay as the applications were filed beyond the period of sixty days.

22. In the circumstances, the authorities cannot be blamed for rejecting the applications for the claim of refund in the nature of drawback on the ground that those applications were filed beyond the period of limitation prescribed in law. However, considering the fact that Petitioners had been pursuing the matter till this date in this Court, nothing could prevent the Petitioners from approaching the Respondents with proper application under Rule 15 of the said Rules. If such an application is filed within a period of 4 weeks from today, the Respondents shall dispose of the same in accordance with the provisions of law after hearing the Petitioners, within a period of 3 months from the date of such application. With these observations, petition is dismissed and rule is discharged with no order as to costs.

