HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 19673/2022

CNR: RJHC010901972022 | URN: CW / 39386U / 2022

M/s Bhati & Company, E-524-526, MIA, Basni Phase-II, Jodhpur Rajasthan Through Its Partner And Authorised Signatory Jagmohan Singh Bhati Son of Sh. Vijay Singh Ji Bhati Aged 51 Years Resident of A-25, Shastri Nagar, Jodhpur (Raj.).

----Petitioner

Versus

1. Union Of India, Through The Additional Secretary To The Government Of India, Ministry Of Finance, Department Of Revenue, 14, HUDCO, Vishala Building, B-Wing, 6th Floor, Bhikaji Cama Place, New Delhi-110066.
2. The Commissioner (Appeals), Office Of The Commissioner (Customs And Central Excise), NCR Building, C-Scheme, Jaipur-302005.
3. The Assistant/deputy Commissioner, Custom Department, ICD RAJSICO, Bhagat Ki Kothi, Jodhpur (Raj.).

----Respondents

Connected With

D.B. Civil Writ Petition No. 14320/2022

CNR: RJHC010661192022 | URN: CW / 28614U / 2022

Latiyal Handicrafts Pvt. Ltd., Unit-I, Near Kanhaiya Goshala, Pal Road, Jodhpur (Raj) Through Its Director And Authorised Signatory Dev Narayan Ranga Resident of 57, Jawala Vihar Opp. Kothari Hospital, Chopasani Road, Jodhpur (Raj.).

----Petitioner

Versus

1. Union Of India, Through The Additional Secretary To The Government Of India, Ministry Of Finance, Department Of Revenue, 14, HUDCO, Vishala Building, B-Wing, 6th Floor, Bhikaji Cama Place, New Delhi-110066.
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3. The Assistant/deputy Commissioner, Custom Department,

ICD RAJSICO, Bhagat Ki Kothi, Jodhpur (Raj.).

----Respondents

For Petitioner(s)	:	Mr. Suresh Kumbhat Ms. Sheetal Kumbhat Mr. Naman Bhansali Ms. Yoshita Ramawat Ms. Gunjan Purohit
For Respondent(s)	:	Mr. Rajvendra Sarasawat Mr. Jitesh Kumar Suthar Mr. Rishabh Dabhich

HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MRS. JUSTICE SANGEETA SHARMA

Reportable **Order**

12/08/2026

1. The issue involved in these two writ petitions is common. Therefore, both the writ petitions are being taken up for disposal by this common order.

2. The facts of the cases disclose that in the case of M/s Bhati & Company, the petitioner had exported handicrafts/artistic wooden furniture items under six shipping bills commencing from 13.05.2011 to 20.05.2011 and in the case of Latiyal Handicrafts Pvt. Ltd., the petitioner had exported handicrafts/artistic wooden furniture items under seven shipping bills commencing from 13.10.2009 to 25.05.2011. While making self-assessment on shipping bills, the petitioners have classified the goods exported under Drawback Schedule Nos.9401 and 940399 by describing such goods as handicrafts/artistic wooden furniture items. The proper classification for the shipped items falls under Drawback Schedule No.442101 under the Drawback Schedule Notification.

3. The petitioners in respect of each shipping bill, carried out self-assessment, under Section 17 of Customs Act, 1962 (hereinafter referred to as “Act of 1962”). In the said self-assessment, they described different classification instead of proper/correct classification under the drawback schedule. As a result, the excess payments of drawbacks amounts were claimed and paid to the petitioners.

4. In the Audit, they found misclassification of goods exported. Pursuant to the audit objection, the respondents issued a show cause notice dated 25.03.2013 for recovery of excess drawbacks on the premise that such payment was erroneously paid by invoking Section 142(1) read with Section 75A of Act of 1962, and Rule 16 of the Customs and Excise Duties And Service Tax Drawback Rules, 1995 (hereinafter referred to as “Rules of 1995”).

5. The petitioners submitted their replies to the show cause notices and, thereafter, the respondents passed orders, determining the amount of excess drawback paid and initiating recovery thereof. The said orders were challenged in appeal, however, the appeals were also unsuccessful. Subsequently, the Revisional Authority, in exercise of the revisional powers, set aside the orders passed by the original authority as well as the Appellate Authority and remanded the matters for fresh consideration. Aggrieved by the same, the present writ petitions have been filed.

6. The main contention of learned counsel appearing for the petitioners is that the invocation of Section 75A(2) of the Act of

1962, on the premise that recovery is sought to be made in respect of the excess payment of drawback is misconceived. It is contended that the present case is not one of excess payment, but a case of payment made on the basis of self-assessment. The further contention of counsel for the petitioners is that once a self-assessment is done under Section 17 of the Act of 1962, the respondents are required to accept or verify the same and, if the respondents find that self-assessment is not correct, they can also proceed for reassessment. After such a reassessment, if any liability is crystalised, they can draw the recovery proceedings under Section 75A (2) r/w 142(1) of Act of 1962. In the present case, recovery was directly done without going for reassessment, which is without a jurisdiction, and seeks to intervene in the impugned order.

7. The learned counsel appearing for the respondents submits that the payment of excess drawback was result of misclassification of goods. As per the shipping bills, the goods exported were handicrafts and artistic wood furniture, which is not in dispute. The classification was wrongly applied to such goods, so as to claim excess drawbacks, and the said incorrect classification was noticed by the Audit Department, and they found that excess drawbacks were erroneously paid on account of wrong classification. Therefore, they directly invoked the Section 75A r/w Section 142 of the Act of 1962. According to him, the impugned order is only remand order, whereby the original authority is required to reconsider the case of the respondent, and the contention which they have canvassed before this Court can

also be canvassed before the original authority. Therefore, interference of this Court is unwarranted.

8. Heard both sides extensively and gone through the documents relied upon by both parties.

9. The facts which are not in dispute are that the petitioners have self-assessed based on the shipping bills. The shipping bills clearly indicate that the goods exported were handicrafts and artistic wooden furniture. In the self-assessment, they classified the goods under Drawback Schedule Nos.9401 and 940399. The respondents' stand is that the goods exported falls under Drawback Schedule No.442101. The drawback schedule with respect to above schedule contains as follows:

Schedule No.9401	Seats (other than those of heading 9402) whether or not convertible into beds, and parts thereof.
Schedule No.940399	Other furniture articles made out of other material including wood, bamboo or cane
Schedule No.442101	Handicrafts/Artware of wood

Looking at the schedule, the goods which were exported under shipping bills fall under category of "handicrafts/artware of wood" the appropriate schedule no. 442101 and not no.9401 and 940399. The petitioners have misclassified the goods under different head of drawback schedule, instead of correct heading.

10. Now, the question that arises is whether, once a self-assessment was made and accepted based on the misclassification of the goods exported, the authority can directly invoke the power

under Section 75A of the Act of 1962 without first resorting to reassessment as required under Section 17 thereof. In this regard, it is appropriate to refer to Sections 17, 18, 50 and 51 of the Act of 1962.

> **"17. Assessment of Duty:-**
> (1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under, section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.
>
> (2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.
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> (3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.
>
> (4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the enter relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty."
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> **"Section 18**. **Provisional assessment of duty**:-(1) Notwithstanding anything contained in

this Act but without prejudice to the provisions of section 46 and section 50:-

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

(2) When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then:-

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of [the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to:-

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75."

"50. Entry of Goods for Exportation. (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its Contents."

"51. Clearance of Goods for Exportation. Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation."

11. As per Section 17 of the Act of 1962, every exporter entering any export goods under Section 50 of the Act of 1962, shall self-assess their duty, if any, leviable on such goods. The proper officer, may verify such self-assessment. In the event, the proper officer is not agreeing with the self-assessment, he has to proceed for re-assessment as per the Section 17(4) of the Act of 1962. If the re-assessment is accepted by the exporter, there is no need to pass any speaking order whereas in case the re-assessment is not accepted, the Officer is required to pass a speaking order determining the duty leviable on such goods.

12. Section 18 of the Act of 1962, is a provision which enables the proper officer to pass assessment order provisionally; later, final assessment order. There are four enumerated circumstances under which the provisional assessment can be done under

Section 18 of the Act of 1962. One of the ground is, if request is made by the exporter to pass an assessment order instead of self-assessment, the proper officer is required to pass assessment order as required under Section 18 of the Act of 1962.

13. Section 75A (2) of the Act of 1962, deals with recovery of erroneous payment, or any payment otherwise recoverable under the acts or rules made thereunder. It is relevant to refer to section 75A(2) of Act of 1962 which reads as follows:

> **"75A. Interest on drawback:**-
> (1)……
> (2) Where any drawback has been **paid to the claimant erroneously** or **it becomes otherwise recoverable under this Act or the rules made thereunder**, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback."

14. The present proceedings emanate from a show cause notice issued under Section 75(2) of the Act of 1962, on the assumption that the drawbacks paid to the petitioners were erroneous. Accordingly, the authorities proceeded to determine and recover the alleged erroneous amount. Such action is contrary to the scheme of the Act. As long as the self-assessment remains in force and has not been challenged, the payment should be deemed to have been made on the basis of such self-assessment, notwithstanding the fact that such self-assessment may have resulted from misdeclaration or misclassification. If any such misdeclaration or misclassification is subsequently found, resulting

in the excess payment of drawback, the authority may have recourse to Section 17(4) of the Act of 1962 or may invoke the provisions of Section 18 of the Act of 1962 for conducting a further inquiry.

15. Admittedly, in the present case, they have not invoked the provisions under Sections 17 and 18 of the Act of 1962. They have directly proceeded under Section 75A (2) of the Act of 1962. Section 75A of the Act of 1962, is intended to recover the amount which is erroneously paid or recoverable under this act or rules made thereunder. This provision can be invoked in the present facts of the case only after crystallization of amount as consequence of reassessment and not before.

16. The present case was proceeded with as if it was an erroneous payment. But, in fact, it is not a case of erroneous payment, but a case of payment pursuant to self-assessment, though, such self-assessment was a result of wrong classification of the goods exported. In that case, the authority should have invoked the provisions under Section 17(4) of the Act of 1962, if permissible, instead of Section 75A of the Act of 1962. The entire proceedings are directly resorted to which action is misconceived. As long as the reassessment is done and proper determination is made, such an amount cannot be said to be a recoverable amount under the Act, which they have not done.

17. Therefore, the impugned original proceedings are result of misapplication of law and the same are unsustainable. The Revisional Authority, as well as Appellate Authority failed to consider this aspect of the provisions, resulting in the impugned orders. Therefore, the impugned orders are liable to be set aside.

18. In the result, the writ petitions are allowed. The impugned orders dated 05.01.2015 and 24.10.2021, are set aside. The liberty is given to the respondents to have recourse to Sections 17 and 18 of the Act of 1962, if law permits them.

18. Pending application(s), if any, shall also stand disposed of.

(SANGEETA SHARMA),J **(MUNNURI LAXMAN),J**

68-69/SHIVANI