

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 16559 of 2006

M/S. SESAME FOODS PRIVATE LIMITED Petitioner
Through: Mr. Arjun Mitra, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. S.K. Dubey, Mr. Ritesh Kumar, Mr.
Akshay Singh, and Mr. Vanshdeep Dalmia,
Advocates for R-1, R-2 and R-5.
Mr. Abhishek Kumar, Advocate for R-7.
Mr. Satish Aggarwala with Ms. Hrishika Pandit,
Advocates for R-3 & R-4.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER
02.02.2010

W.P.(C) No. 16559 of 2006 & CM Nos. 13554 of 2006 (for stay), 15654 of 2007 (for directions), 1059 of 2008 & 7583 of 2008

1. The Petitioner which is an export oriented unit ('EOU') having its office at Ansal Bhavan, Kasturba Gandhi Marg, New Delhi challenged the impugned order dated 15th/16th February, 28th February, 19th April and 18th September 2006 issued by the Respondents seeking to recover a sum of Rs.3,22,91,926/- stated to be the amount of duty drawback paid to it in excess.

2. In terms of a letter of permission dated 18th May 1999 the Petitioner was approved for manufacture and export of sesame seeds in terms of the Export

and Import Policy ('Exim Policy') for the period 2002-07. The Petitioner states that its approval was up to 2011.

3. According to the Petitioner certain concessions are given to exporters operating from the EOUs to enable them to compete at the international level. Goods manufactured by the Petitioner, the raw material whereof is sourced from the Domestic Tariff Area ('DTA') are eligible to the benefit of duty drawback. The Petitioner claims that it is entitled for refund/rebate of the amount corresponding to the duties both customs and excise suffered or leviable on the inputs that go into the manufacture of the exported products. In particular, the Petitioner relies upon 6.12(a) of the Exim Policy which provides that "supplies from the DTA to EOU will be regarded as "deemed exports" and the DTA supplier shall be eligible for the relevant entitlements under Chapter 8 of the Policy besides discharge of export obligation, if any, on the supplier. Further, notwithstanding the above, the EOU units shall, on production of a suitable disclaimer from the DTA supplier, "be eligible for obtaining the entitlements specified in chapter 8 of the Policy." The said clause further provides that for the purpose of claiming the deemed export duty drawback, the EOU shall get Brand Rates fixed by the Development Commissioner, wherever All Industry Rates of Drawback are not available."

4. The Petitioner made an application on 30th December 2003 to the Respondent No.2, Director General of Foreign Trade ('DGFT') for fixation of the rate of duty drawback on "sesame seeds deemed export" under para 8.3(b) of the EXIM Policy 2002-07. Clause 8.3(b) of the EXIM Policy provides that the deemed exports draw back shall be eligible for deemed export duty

drawback. It is stated that on 25th May 2004 the Petitioner submitted the original payment certificates and disclaimers for all the claims with the office of the Deputy Commissioner, Noida Special Economic Zone ('NSEZ'), Respondent No.3 herein. The bankers of the Petitioner i.e. State Bank of India (SBI) are also stated to have sought clarifications from the NSEZ about the status of the drawback claims made by the Petitioner by the letter dated 8th June 2004. By a letter dated 16th June 2004 the NSEZ raised queries regarding the Petitioner's claims for deemed export duty drawback. The Petitioner was asked to explain how the claims submitted by the Petitioner showed duty paid as nil but duty was claimed at 30% and 20% of F.O.R.

5. On 16th June 2004 the Petitioner replied to the NSEZ taking the following stand:

“(i) that the goods were neither directly imported by the Petitioner nor the same was a pre-requisite under the applicable policy;

(ii) that the duties claimed goods were sourced from DTA supplier and have been treated as deemed imports as per the applicable Exim and Foreign Trade Policy.

(iii) That the duties claimed were based on the duties chargeable based on duty confirmed by Federation of Indian Export Organisation (FIEO) vide their letter No. FIEO/EP. 10 (2)/04 dated 16-6-2004 (Annexure L).

(iv) That although the duty paid would be shown as Nil, the claims were based not on the actual import duty to be paid but on the deemed import price worked out for the purposes of parity for deemed imported goods to cater to the needs of EOU.

(v) The Petitioner was not required to submit any bill of entry/import invoice nor any duty paying documents as queried.”

6. It is stated in para 15 of the writ petition that “since the Petitioner has exported the sesame seeds therefore it had claimed the duty drawbacks in respect of custom duty leviable on imports of sesame seeds.” It is claimed further that the Petitioner is “entitled for duty drawback of custom duty as applicable under the custom tariff irrespective of whether the seeds were sourced from actual import by paying import duty or the same were sourced from the domestic market.” The Petitioners claimed that they have already been granted deemed export drawback by DGFT on high speed diesel (‘HSD’) on the basis of custom duties leviable as per custom tariff Manual on Free on Board (‘FOB’) value of fuel. They sought similar grant of export duty drawback in respect of the sesame seeds.

7. On the basis of the Petitioners representation the Development Commissioner vide letter dated 4th October 2004 fixed the brand rate and the amount of duty drawback at Rs.168.12 lakhs for the period 1st October 2001 to 31st March 2002 (as against a sum of Rs.439.80 lakhs) which is claimed by the Petitioner. Likewise for the period 1st April 2001 to 30th September 2001 the duty drawback was fixed at Rs.61.89 lakhs. For the period of April 2002 to September 2002 at Rs.39,76,077, October 2002 to March 2003 Rs.90,06,466/- and April 2004 to September 2004 at Rs.24,97,129. The above amounts were paid to the Petitioner. Since the above settlements were less than what was claimed by the Petitioner it made a representation on 17th

January 2005. On 5th August 2005 the DGFT wrote to the Petitioner stating that the matter had been considered by it in consultation with the Department of Revenue Duty Drawbacks Directorate. The observations made by the Central Board of Excise & Customs had also been considered. It was pointed out that in order to qualify for 'deemed export' the primary condition is that the goods should be manufactured in India and that "in the instant case the sesame seeds supplied by the DTA was not manufactured in India and was imported." It was pointed out that the photocopy of the bill of entry was not submitted by the Petitioner and, therefore, the incidence of duty could not be established.

8. According to the Petitioner the definition of drawback did not mandate the proof of duty incidence. However there was no dispute in so far as the selling of goods in the international market. The Petitioner has made commitments to the banks, financial institutions and importers on the basis of claims paid. It is stated that on 15th/16th February 2006 a communication was received from the DGFT, with reference to the Petitioner's representation dated 21st December 2005 that "since payment of duty incidence has not been approved you are not entitled to deemed export drawback." This was followed by a letter dated 28th February 2006 issued by the NSEZ asking the Petitioner to refund a sum of Rs.3,22,91,926/- paid to it in excess as deemed export duty drawback. The Petitioner was reminded that it had furnished a declaration/undertaking signed by it granting "immediate refund of the amount of drawback obtained... in excess and any amount/rate which may be re-determined by the Government as a result of post verification." The Petitioner made a representation dated 2nd March 2006 which was rejected on 19th April 2006 by the DGFT. A

further representation dated 21st April 2006 was rejected by a letter dated 1st May 2006 issued by the Joint Development Commissioner, NSEZ once again raising a demand of Rs.3,22,91,926. This was reiterated by a further demand to the same effect dated 18th September 2006.

9. On 28th September 2006 the Petitioner was again informed by the Respondents that sesame seeds were not entitled to any duty drawback benefits as duty incidence on the same cannot be established and therefore the duty drawback claims forwarded for the year 1st April 2003 to 30th September 2003 and 1st October 2003 to 31st March 2004 were inadmissible. It was in the above circumstances that the present petition has been filed.

10. On 8th November 2006 while directing notice to issue to the Respondents an interim order was passed restraining the Respondents from taking steps to recover the amount demonstrated in the aforementioned letters.

11. In the counter affidavit filed by the Respondents, while it is not denied that the Petitioner is an EOU and an exporter of sesame seeds and that the Petitioner procured its raw material from the DTA suppliers it is pointed out that the Petitioner had been claiming duty drawback by producing disclaimers from the DTA suppliers. The Petitioner had not provided proof of incidence of duty suffered on the said goods procured from the DTA suppliers and “had been representing all the while that as the raw material supplied by the DTA suppliers was imported by it, the goods must have suffered customs duty as shown in the customs tariff.” It is stated that the brand rates of duty drawback on the Petitioner’s application were fixed and the amounts were disbursed to

the Petitioner because the Petitioner had throughout represented that the raw material procured by it from the DTA supplier had been itself imported by the suppliers and the duties must have been paid on the same. A declaration was also furnished by the petitioner to this effect on 27th October 2004. Further at the time of disbursement the Petitioner had undertaken to indemnify the Respondents in case excess payment of export duty drawback was made to it. It appears that on 18th March 2005 the NSEZ had written to the DGFT expressing difficulty in fixing the brand rate and asked it to suggest a modus operandi to fix it for sesame seeds. In its letter dated 5th August 2005 the DGFT informed the NSEZ that since the goods supplied by the DTA to the Petitioner had not been manufactured in India the same could not be considered as 'deemed exports' and therefore a clarification was sought from the Department of Commerce. The latter by its letter dated 14th October 2005 informed the NSEZ that since the Petitioner had not filed any proof of product having been imported no claim of drawback was permissible.

12. Meanwhile the Respondents detected several discrepancies and falsehood in the claims made by the Petitioner. It came to light that many of the DTA suppliers had not been paid for their goods by the Petitioner and were approaching the NSEZ for redressing their grievance. The bank statement submitted by the Petitioner as proof of payment of suppliers was not in the statutory format which required the form to be endorsed by the supplier's banker whereas the Petitioner's form had been endorsed by its own banker. No response had been received from the Petitioner's banker SBI for the clarification sought. Along with the counter affidavit the Respondents enclosed letters dated 3rd January 2007 and affidavits dated 31st January 2007

issued by M/s. Ameer Traders and M/s. Chandarana & Brothers both of Rajkot stating inter alia that they had not prepared the disclaimer certificates produced by the Petitioner although the signatures shown therein was similar to theirs. It was stated that since the sesame seeds were purchased from the local mandi it was not possible to provide any customs duty documents. The Respondents have with the counter affidavit also enclosed a letter dated 3rd January 2007 of the Agricultural Produce Market Committee (APMC), Rajkot has been enclosed stating that to the best of its knowledge “there is no import of sesame seeds into the State of Gujarat as the State has abundant product of sesame seeds locally grown.”

13. In the rejoinder affidavit of the petitioner it is inter alia sought to be contended that a criminal case filed by M/s. Ameer Traders against the Petitioner was settled by them in the court of the Judicial Magistrate at Rajkot. Further both M/s. Chandarana Brothers and M/s. Ameer Traders are owned by one and the same person. It is alleged that the affidavits and documents have been procured from him by Respondents 3 and 4 “by exercise of undue influence or misrepresentation in order to justify their illegal actions.” Several factors are pointed out to demonstrate that the said affidavits are per se false and contrary to the factual position. It is then pointed out that when brand rate drawback could be fixed for HSD by relying on the invoice value of the goods supplied and the cess chargeable, there was no difficulty in fixing the brand rate for the sesame seeds which can be considered as ‘deemed export.’ It is stated that in view of the payments already received by the Petitioner, its banker SBI had assessed the commercial and fiscal viability of the Petitioner, had sanctioned loans and

disbursed funds. The SBI had a lien on the duty drawback claims payable to the Petitioner. A onetime settlement had been entered into by the Stressed Assets Stabilization Fund ('SASF') of Industrial Development Bank of India ('IDBI') with the unequivocal confirmation of the Respondents duly reconfirmed by the SBI. As per the said settlement, duty drawback claims amounting to Rs.11.459 crores were to be shared in the ratio of 60:40 per cent between SASF and the Petitioner. Accordingly it was pleaded that on the principles of promissory estoppel the Respondents should not be permitted to resile from the earlier action of granting the Petitioner the deemed export duty drawback and demand its refund more than two years later.

14. By a second additional affidavit dated 29th October 2007 the Respondents have placed the statements of two other DTA suppliers named by the Petitioner. Both of them categorically stated that sesame seeds supplied to the Petitioner were local produce of the State of Gujarat.

15. In the meanwhile the Petitioner filed an application CM No. 15635 of 2007 seeking to implead the SBI and the SASF and for directions to restrain them from initiating action for recovery of the dues owing to them by the Petitioner. By an order dated 16th February 2008 the SBI and the SASF were impleaded as parties. By the same order they were restrained from taking further action in respect of the property at House No.28 Sector 9A, Chandigarh and also from taking any action to recover the amounts due. The Petitioner was also directed to maintain status quo as regards the title in the properties.

16. Detailed written submissions have been filed by the Petitioner. The submissions of Mr. Arjun Mitra, learned counsel for the Petitioner and Mr. S.K. Dubey, learned counsel for the Respondent Union of India have been heard at great length.

17. Apart from reiterating the submissions already noted hereinbefore, the learned counsel for the Petitioner submitted that as long as the EOU purchases goods from the DTA suppliers and carries out the manufacturing activity as defined under Clause 9.3 of the Exim Policy and thereafter proceeds to export the finished goods, the sesame seeds so exported are entitled for the claim of deemed export duty drawback. Since the concept of duty export promotion is structured on a deeming event where there is no requirement of any actual incidence of duty having been suffered, there is no requirement for the DTA suppliers to actually import the goods. According to the learned counsel for the Petitioner the rationale for the deeming construction is to place the EOU at par with international competitors for the same and similar item or product so that it is given import price parity with such foreign goods. Reliance is placed on the letter dated 29th July 2004 written by the NSEZ to the Joint Secretary, Ministry of Commerce and Industry supporting the stand of the Petitioner that “even if the sesame seeds is not imported the price on which they have effected purchases are based on the import price parity and includes all duties such as customs duty etc.” therefore “the presumption can be drawn that sesame seeds (being oilseeds) supplied to the applicants would have import price parity. Therefore customs duty as applicable under custom tariff could be allowed through duty drawback.” As regards affidavits of DTA suppliers which have been placed on record by the Respondents it is stated

that these are false and have been procured by the Respondents. It is submitted that the sole purpose of disclaimer is to ensure that the drawback benefit is not claimed twice and it is nowhere suggested that apart from the Petitioner any one else has availed of the deemed export duty drawback. Learned counsel for the Petitioner points out that the only issue which required a decision making process on the part of the DGFT under the Exim Policy was whether AIR would be applicable. The DGFT had itself suggested to the Department of Commerce & Industry that the suppliers of the sesame seeds by the DTA suppliers to EOU “can be recorded as deemed export benefits as per the definition of deemed exports given in para 8.2 of the policy. In that case the deemed export benefit (‘DBK’) shall be admissible in terms of para 8.3 of the Policy and the same can also be claimed by the EOU on the basis of disclaimers from the DTA suppliers in terms of para 6.11 of the Policy. Further, if no AI Rate exists on the product namely sesame seeds, the Development Commissioner, NSEZ can fix up a brand rate for refund of all applicable duties (customs/excise), levies, cess etc., as admissible under the DBK Rules.” It is submitted that the attempt by the Respondents to apply the foreign trade policy (FTP) which was applicable only prospectively, and to deny the benefit of deemed export duty drawback to which the Petitioner was legitimately entitled, was unjust and arbitrary. Learned counsel for the Petitioner placed reliance upon the decision of this Court in *Agri Trade India Services Pvt. Ltd. v. Union of India* 132 (2006) DLT 500.

18. Appearing for the Respondents, Mr. S.K. Dubey pointed out that the Petitioner has been changing its stand from time to time. The Exim Policy had to be read and interpreted consistent with the concept of “drawback” as

understood under the Excise and Customs Law. The deeming fiction of an export or import cannot be permitted to go beyond the original concept itself under the relevant statutes. Relying on the definition of 'drawback' as given in **P. Ramanatha Aiyar's The Law Lexicon** Second Edition (1999 reprint p. 594) he pointed out that drawback implies that a commodity in respect of which it is granted, has in fact suffered the incidence of duty. If it is locally manufactured it should have suffered excise duty and if imported it should have suffered customs duty. In this connection he also places reliance upon the judgment in *State of UP v. Delhi Cloth Mills (1991) 1 SCC 454*. It is submitted that sesame seeds being a marketable produce procured locally may not possibly have suffered excise duty. Since affidavits of the very traders from whom the Petitioner is stated to have procured the sesame seeds have confirmed that these were not imported, there was no question of the sesame seeds having suffered customs duty. He also refers that at no point in time the Petitioner could satisfy the Respondents that the sesame seeds in question suffered any incidence of duty and since this was the basic requirement, there was no question of the Petitioner being permitted deemed export duty drawback.

19. Given the scope of judicial review by this Court in exercise of its jurisdiction under Article 226 of the Constitution, the issue that arises for consideration is whether the action of the Respondents in seeking to withdraw the benefit of deemed export duty drawback granted to the Petitioner and demand its refund was just, fair and reasonable. The decision of the Respondents should have been based on some relevant material based on which it decided to withdraw the benefit of deemed export duty drawback

granted to the Petitioner. The incidental question would be whether the decision to withdraw the benefit was preceded by sufficient compliance with the principles of natural justice. In other words, was the petitioner given sufficient opportunity to put forth its version which was then considered.

20. Much argument has been advanced on the applicability of the relevant clauses of the Exim Policy. The relevant portion of Clause 6.12(a) of the Exim Policy, on which considerable reliance has been placed, reads as under:

“Supplies from the DTA to EOU/EHTP/STP units will be regarded as “deemed exports” and the DTA supplier shall be eligible for the relevant entitlements under chapter 8 of the Policy besides discharge of EP if any, on the supplier. Notwithstanding the above, EOU/EHTP/STP units shall, on production of a suitable disclaimer from the DTA supplier, be eligible for obtaining the entitlements specified in chapter 8 of the Policy. For the purpose of claiming deemed export duty drawback, they shall get Brand Rates fixed by the DGFT wherever All Industry Rates of Drawback are not available. In addition the EOU/EHTP/STP units shall be entitled to the following.....”

Clause 8.2(b) of the Exim Policy provides that the following categories of supplies of goods by the main/sub-contractors shall be regarded as “deemed exports” provided the goods are manufactured in India:

“(b) Supply of goods to Export Oriented Units (EOUs) or Software Technology Parks (STPs) or Electronic Hardware Technology Parks (EHTPs) or Bio Technology Parks (BTP)”

21. The clauses require that an EOU, for the purposes of claiming deemed export duty drawback, should produce “a suitable disclaimer from the DTA

supplier”. The very basis for the claim is the disclaimer certificate. There are enough documents produced by the Respondents in the instant case to show that the very traders in the DTA from whom the Petitioner claims to have procured the sesame seeds have stated that such stock was not imported. The letter of the APMC, Rajkot as well as of these traders indicate that sesame seeds are grown in abundance locally. There was no occasion to import sesame seeds at all. This is at complete variance with the Petitioner’s stand that the goods were imported.

22. At the time of disbursement of the claim, on 27th October 2004, the Petitioner gave the following declaration:

“DECLARATION

We, Sesame Foods Private Limited, 807, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi-110001 confirm that:

1. We have received the confirmation for prices charged by the DTA suppliers for Sesame seeds as per their letter dated 5th and 9th July (copy enclosed.)
2. The suppliers have confirmed that the incidence of all levies, **Customs duties**, Cess etc. as applicable at the time of purchase have been duly considered in the prices charged by them. Only the local taxes as applicable are reflected separately in the invoices.
3. We hereby **confirm that to the best of our knowledge and belief the prices charged by the DTA suppliers in the invoices raised to us have been arrived at after including the incidence of all levies, Customs duties, Cess etc.”** (emphasis supplied)

23. There can be no manner of doubt that the petitioner was leading the Respondents to believe that the DTA suppliers had imported sesame seeds and had paid customs duties which had thereafter been built into their price. The petitioner stuck to this stand even in its letter dated 9th November 2005 where it claimed that the country does not produce sufficient indigenous goods and depends surely on imports thereby suggesting that the sesame seeds in respect of which the drawback was claimed was imported. Then we have the Petitioner's letter dated 21st April 2006 to the Ministry of Commerce & Industry where it was stated that "we are prepared to furnish the proof of duty suffered on the imported Sesame seeds for the relevant periods of the claim and to the entire satisfaction of the department."

24. Clearly the above stand of the petitioner has been demonstrated to be untenable by the subsequent letters of the APMC Rajkot and of the DTA suppliers themselves. Although it was submitted that the decision to withdraw the benefit was not per se based on these letters, which came later, the fact remains that the petitioner was unable to show proof of the goods having suffered incidence of customs duty although it had undertaken to do so by its letter dated 21st April 2006. This court is satisfied that despite the petitioner having been provided numerous opportunities to justify its claim for deemed export duty drawback, it failed to do so. There has, to that extent, sufficient compliance with the principles of natural justice.

25. The second major difficulty for the petitioner is that the veracity of disclaimer certificates produced by it for claiming deemed export duty drawback have been shown prima facie to be doubtful. The affidavits dated

31st January 2007 of the DTA suppliers clearly show that they had not prepared such certificates. Although the petitioner has questioned the affidavits claiming that these were 'procured' by the Respondents, the Court in its writ jurisdiction has only to examine if this was relevant material justifying the Respondents' decision to withdraw the benefit of drawback granted to the petitioner. The answer to that question has to be in the affirmative in the facts and circumstances of the case.

26. The petitioner has during the course of arguments tried to shift its stand to urge that there was no need for the goods supplied by the DTA suppliers to be imported at all in the first place since this was only a 'deemed export' and the supplies to the EOU by the DTA suppliers were accordingly 'deemed imports'. This Court is unable to accept this submission. In the first place, the petitioner cannot be permitted to shift its stand about the requirement of the law to suit its convenience. If it maintained before the Respondents, and the documents referred to show that it in fact did, that the goods in question were imported, it has to make good that case. Clearly the Respondents were led to believe that the goods were in fact imported. After being unable to make good this claim despite numerous opportunities, it is not open to the petitioner to seek to change the very basis of its claim. The Respondents admitted the claim of the Petitioner on the basis that the sesame seeds in question were not in fact imported. If this is factually correct then the very basis for entertaining the claims of the Petitioners goes.

27. There is considerable merit in the submission of the Respondents about the very concept of a duty drawback. It is posited on the goods having

suffered some incidence of indirect tax, either excise or customs duty. The following observations of the Supreme Court in *State of U.P. v. Delhi Cloth Mills* (supra) are relevant (SCC @ p. 468):

“Drawback means the repayment of duties or taxes previously charged on commodities, from which they are relieved on exportation. For example, in the customs laws of some countries an allowance is made by the Government upon the duties due on imported merchandise when the importer, instead of selling it within the country re-exports it, and then the difference of duty is refunded, if already paid.”

28. The deeming fiction of an export cannot be stretched beyond the scope of the concept of ‘drawback.’ In the **Interpretation of Statutes (9th Edn. 2004)** by G.P.Singh it is observed:

“In interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction. And a legal fiction in terms enacted ‘for purposes of this Act’ is normally restricted to that Act and cannot be extended to cover another Act.”

[See also *Union of India v. Sampat Raj Dugar*, AIR 1992 SC 1417, p. 1423 and *Garden Silk Mills Ltd. v. Union of India*, AIR 2000 SC 33]

The very concept of a 'drawback' presupposes that it is preceded by a transaction that has suffered some incidence of duty, either excise or customs duty. If agricultural inputs that are in fact not imported, do not otherwise suffer incidence of excise duty, the question of fixing an AIR for such commodity cannot arise. The parity sought with HSD is plainly misconceived as HSD is a non-agricultural commodity which is manufactured and otherwise is amenable to levy of excise duties. This fundamental difference was perhaps lost sight of when the Respondents proceeded to fix AIR for sesame seeds. The only manner in which the petitioner could have got the benefit was to show that the sesame seeds were in fact imported. That explains why it repeatedly assured the Respondents that it would provide proof to this effect. And it failed to do so.

29. In the above circumstances, there is no question of invocation of the principle of promissory estoppel against the Respondents. There is no estoppel against an illegality. If the Petitioner was in fact not entitled in law to claim deemed export duty drawback they cannot prevent the Respondents from taking corrective steps to recover the amounts wrongly released to the Petitioner. Notwithstanding that the Petitioner may subsequently have made arrangements with its banker and financial institutions, the illegality in releasing the deemed export duty drawback to the Petitioner cannot be justified or condoned.

30. There is no merit in the submission that the Respondents are trying to apply the FTP retrospectively to the Petitioner's transaction and, therefore, the impugned orders are not legally sustainable. As already noticed hereinbefore

the very factual basis to sustain the claim of the Petitioner on the basis of the clauses in the Exim Policy, is non-existent. A very serious question mark has been put on the disclaimer certificates produced by the Petitioner. The Petitioner has been unable to show that the disclaimer certificates which they have produced are in fact reliable and genuine documents. After claiming that the sesame seeds in question were imported, the petitioner has been unable to make good that claim.

31. After the arguments concluded, Mr. Sanjay Jain, learned Senior counsel appeared on behalf of the Petitioner and submitted that the interim orders passed by the Court earlier should be continued for some time to enable the Petitioner to file an appeal. In the facts and circumstances of the case, this Court declines this prayer. It was then submitted that the Petitioner's remedy of filing a civil suit on the very issues agitated in this petition should be left open and that this order should not influence those proceedings. As far as this plea is concerned, while the Petitioner if so advised, can seek whatever remedies are available to it by way of a civil suit, it is not possible to accept the plea that the decision of this Court (as long it is not overturned by the decision of a higher court) on the points put in issue before it and argued extensively by the petitioner will not bind the petitioner.

32. In view of the above, this Court finds no legal infirmity in the impugned decisions taken by the Respondents to withdraw the deemed export duty drawback granted to the Petitioner. The petition is without merit and it is dismissed as such with costs of Rs.20,000/- which will be paid by the Petitioner to the Respondents within a period of four weeks.

33. All interim orders stand vacated. The applications are dismissed.

S. MURALIDHAR, J.

FEBRUARY 02, 2010
dn