

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1480 OF 2015

Sarla Performance Fibers Limited

..Petitioner

Vs.

The Union of India and Others

..Respondents

WITH

WRIT PETITION NO. 1383 OF 2016

Shalina Laboratories Pvt Limited

..Petitioner

Vs.

The Union of India and Others

..Respondents

Mr. Prakash Shah a/w Mr. Jas Sanghavi, Mr. Anush Desai i/b PDS Legal, for the Petitioner in both Writ Petitions.

Mr. Beni Chatterjee, Senior Counsel a/w Mr. Pradeep S. Jetly, Mr. M. S. Bhardwaj, for the Respondent Nos.1 to 3 in WP.1480/15.

Mr. Pradeep S. Jetly a/w Ms. Neeta V. Masurkar, Mr. S. G. Thakur, for the Respondents in WP.1383/16.

**CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

DATE :- AUGUST 29, 2016.

P. C.:

Heard both sides. The order passed and contained in

several communications is impugned in the Writ Petitions for it purports to deny the Petitioners, the deemed export drawback under All Industry Rate of Duty Drawback on customs duty components paid on inputs/components.

2 What according to the Respondents is deemed export draw back under All Industry Rate of Duty Draw Back is on customs duty paid on inputs/components. However, the Petitioner is only seeking a declaration that it is entitled to deemed export drawback mentioned in Column-B, "Sr No.540203" of Schedule of All Industry Duty Drawback Rates 2011-2012.

3 Though some what detailed pleadings are on record, including an affidavit-in-reply, what we find as a threshold complaint and made by Mr.Shah, appearing for the Petitioners is that the application seeking the above relief has not been decided in accordance with law. All that the department continues to do is to engage the Petitioner in some correspondence but at no stage, the Petitioners were given a proper opportunity of being heard nor the impugned order is passed based on their written representations and points raised during oral hearing.

4 The request of the Petitioner is denied only by addressing some letters and which outlines the stand of the Respondents emanating from the Development Commissioner SEEPZ, Special Economic Zone. This hardly satisfies, according to Mr. Shah, the requirements of the principles of natural justice.

5 Mr. Jetly, on the other hand, would submit that the Petitioners very well know as to why the relief cannot be granted and additionally because now the issues stand settled in terms of a Division Bench judgment of this Court, which according to Mr. Jetly is rendered in Writ Petition No.2926 of 2015 (Lupin Limited v/s The Union of India) along with Writ Petition No.2927 of 2015 (Sandoz Private Limited v/s The Union of India), decided on 1st August, 2016.

6 We have heard the counsel only on this limited point and what we find is that the Assistant Development Commissioner, SEEPZ, Special Economic Zone, Mumbai is seeking to deal with an application styled as draw back application. He is aware that it is a refund application under the duty draw back

and for the relevant period. The claim of the Petitioner is that the supplies made from the domestic tariff unit to the export oriented unit are eligible for refund on All Industry Draw Back Rate and draw back application should be processed accordingly.

7 The Petitioner complained throughout that they have not heard anything from the authorities. They have only been intermittently informed and that too by some letters of the Assistant Commissioner, how that draw back is not admissible.

8 We have perused some of the communications and letters with the assistance of Mr Shah appearing for the Petitioner and we find that the authority was dealing with an application for duty draw back. That is addressed to the Development Commissioner. It is in such circumstances that it was expected from the Development Commissioner that he would apply his mind to the whole case and after a oral hearing to the Petitioner pass a reasoned order in accordance with law. We, therefore, put it to Mr. Jetly as to why this course cannot be adopted even now. On taking instructions, Mr Jetly informs us that the Development Commissioner SEEPZ, Special Economic Zone, Mumbai himself

will now grant a personal hearing to the Petitioner and on perusal of all the records pass a proper reasoned order on the draw back application within three months from the date of receipt of a copy of this order. We accept this statement of Mr. Jetly as an undertaking to this Court and clarify that we have not examined the rival contentions insofar as merits of the draw back application and that should be decided in accordance with law but uninfluenced by earlier communications addressed to the Petitioner.

9 Both the Writ Petitions are disposed off in these terms.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)