IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.1397 of 2016
Date of Decision: February 10, 2016

M/s Hero Exports, Ludhiana ....Petitioner

versus

Union of India and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE RAJ MOHAN SINGH.

Present: Mr.Sudhir Malhotra, Advocate and
Mr.Chanderhas Yadav, Advocate, for the petitioner.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The petitioner is a partnership firm. It has laid challenge to the show-cause notice dated 10.02.2015 (P-1) issued by the Additional Commissioner of Customs, Ludhiana-respondent No.3 whereby the petitioner has been asked to show cause as to why the Duty Drawback amount of Rs.2,72,82,761/- for the period from October 1999 to December, 2002 be not recovered under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 read with Section 75A(2) of the Customs Act, 1962. The show cause notice is based upon an alleged intelligence received by the Directorate of Revenue Intelligence, Regional Unit, Ludhiana, that prior to the year 2004, the noticee had indulged in misuse of brand rate of duty drawback scheme by availing higher rate of duty drawback, which was fixed for bicycles of various sizes/

weights but had actually exported bicycles of smaller sizes/ weights and had thus availed inadmissible drawback.

[2] The petitioner has raised multiple grounds questioning the validity and propriety of the impugned show-cause notice, on merits as well as it being hopelessly time barred. The core issue raised by the petitioner is that the principal statute, namely, the Customs Act, 1962 prescribes limitation period of five years for initiating such like action, hence the subordinate legislation, namely, the Rules framed thereunder including the Customs and Central Excise Duties Drawback Rules, 1995 cannot provide and/or construe to have provided a period of limitation which enables the authorities to rake up an old and obsolete matter after 13 years.

[3] In support of the preliminary objection on limitation, reliance is placed on the following decisions:-

(i) Spectra Fashions versus Union of India
2016 (41) S.T.R. 184 (Cal.)

(ii) Rashmi Metaliks Ltd. vs. Union of India
2015 (316) E.L.T. 455 (Cal.)

(iii) Indsur Global Limited versus Union of India
2014 (310) E.L.T. 833 (Guj.)

(iv) Padmini Exports versus Union of India
2012 (284) E.L.T. 490 (Guj.).

[4] We have heard learned counsel for the petitioner at a considerable length.

[5] Since only a show cause notice has been issued and final order in response thereto is yet to be passed, we are of the considered view that all the contentions raised herein can be effectively gone into by the 3rd respondent on consideration of the reply to the show-cause notice which may

further be supplemented by the petitioner alongwith the decisions cited before us. Needless to say that the issue of limitation raised by the petitioner would surely require consideration at the hands of 3rd respondent who shall be obligated to deal with the same by passing a reasoned order, especially with reference to the case-law relied upon by the petitioner.

[6] We thus dispose of this writ petition at this stage with liberty to the petitioner to submit a supplementary reply to the show-cause notice, whereupon the 3rd respondent shall pass a reasoned order after hearing the petitioner's representative. As noticed earlier, respondent No.3 shall be obligated to deal with the question of limitation in addition to the merits of the matter.

[7] In the event of any adverse order, the petitioner shall be at liberty to approach the appellate forum as well as any other superior forum, if need be.

[8] Ordered accordingly.

[9] Dasti.

[SURYA KANT]
JUDGE

February 10, 2016
mohinder

[RAJ MOHAN SINGH]
JUDGE