IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.16036 of 2016
Date of decision:11.07.2017

M/s Century Knitters (India) Limited and others ... Petitioners

Vs.

Union of India and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jagmohan Bansal, Advocate
for the petitioners.

Mr. Satish Aggarwala, Advocate
for respondent No.2.

Mr. Amit Goyal, Sr. Standing Counsel
for respondent No.3.

AMIT RAWAL J.

1. Petitioners No.1 and 2, being Companies and petitioner No.3 in individual capacity, have sought indulgence of this Court under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent No.2 to supply copy of statement of yarn suppliers recorded during the investigation.

2. Mr. Jagmohan Bansal, learned counsel appearing on behalf of the petitioners submitted that the petitioners are engaged in the manufacture and export of textile garments, namely, Knitted Gents Shirts and Knitted track suit falling under Chapter Heading 6105 of the Customs Tariff Act,

1975 and exporting goods to various countries, namely, USA, Djibouti, Panama, South Africa, UAE and other countries.

3. According to him, on 26th April, 2012, officers of respondent No.2, i.e., Directorate of Revenue Intelligence (hereinafter called 'DRI') searched factory of petitioner No.1 and residential premises of Director of petitioner No.1 and during the search, incriminating documents and cash was recovered. Even certain cheques and cash recovered from the brief case of petitioner No.3 were seized without recording any panchnama. While exporting the yarn, the petitioners are claiming the duty draw back. The officers of DRI seized a sum of ₹10 crores, ₹4.67 lacs and various cheques from the petitioners. Against the aforementioned illegal acts and omissions, CWP No.10750 of 2012 was filed which was disposed of vide order dated 14.02.2013 (Annexure P-3) with a direction to the respondents to return a sum of ₹8 crores out of ₹10 crores by retaining ₹2 crores to safeguard their interest.

4. Continuing with his submissions, it was contended that after completion of the investigation, respondents issued two show cause notices dated 25.10.2012 and 31.07.2014. The first show cause notice was issued under the signature of Joint Director, DRI Ludhiana and second under the signature of respondent No.3, i.e., Additional/Joint Commissioner of Customs, ICD, TKD New Delhi. The first show cause notice was issued in gross violation of principle of natural justice and the same is under challenge before this Court in CWP No.18990 of 2015, which is pending

adjudication.

5. Challenge in the aforementioned writ petition is to the order dated 7.8.2015 passed by the Commissioner of Customs (Appeals), New Delhi, though the said order is revisable under Section 129DD of the Customs Act, 1962 (hereinafter referred to as "1962 Act"). However, the remedy of revision cannot be resorted to as the revisional authority to hear revision is of the same rank as that of the appellate authority who adjudicated the appeal.

6. It was next urged that during the course of investigation respondents recorded the statements of following yarn suppliers:-

1. Trimurti Hosiery Mills Pvt. Ltd.
2. Amit Sales Corporations
3. Mahavir Traders
4. Ganga Knit Pvt. Ltd.
5. Goyal Yarn Agency
6. Narindra Shawls Trading Co.
7. Sarab Synthetics Pvt. Ltd.
8. Gaurav Yarns
9. Vinay Trading Co.
10. Ashwanit Knit

7. The respondents having failed to supply copies of their statements to the petitioners, the same has necessitated approaching this Court by way of present petition.

8. The solitary relief claimed by the petitioners is that the statement of Yarn Suppliers recorded during the Investigation be supplied to the petitioners. In the separate reply filed by respondents No.2 and 3, the claim of the petitioners has been refuted.

9. Mr. Satish Aggarwala, learned counsel appearing on behalf of respondent No.2 -DRI has raised the objection of maintainability of the writ petition, much less given the gist of various writ petitions filed by the petitioners and pendency of the writ petition bearing No.18990 of 2015. While relying upon the averments made in the writ petition, he submitted that the aforementioned statements cannot be supplied to the petitioners as the show cause notice is based upon the market inquiry and therefore, the apprehension of the petitioners is wholly misplaced. Neither the said statements are part of the notice nor the same have been relied upon documents. In fact, the said statements appear to have been made by the respective makers in connivance with the petitioners to help them. Further, this is an attempt to delay the adjudication of the matter pending before the adjudicating authority and thus, urged this Court for dismissal of the writ petition.

10. Similar is the stand taken in the written statement filed on behalf of respondent No.3 through Mr. Amit Goyal, Advocate, wherein, heavy reliance has been placed upon letters, Annexures R3/1 and R3/2, vide which the Government of India had called upon the petitioners to take the copies of the relied documents from DRI, Ludhiana, yet the petitioners did not come forward to take the same and thus, urges this Court for dismissal

of the writ petition being clear cut case of adoption of dilatory tactics.

11. We have heard learned counsel for the parties, appraised the paper book and of the view that principle of natural justice are required to be followed. Further, respondent No.3 in his reply, vide Annexures R-3/1 and R-3/2 addressed to respondent No.2 had asked him to supply statement of the suppliers to the notices. Moreover, even during arguments, learned counsel for the respondents did not raise any serious objection to the supply of these statements to the petitioners.

12. In view of the above, it would be appropriate to issue a direction to the respondent to supply the copies of the statements of the suppliers indicated in the writ petition within a period of one month from the date of receipt of certified copy of this order. Ordered accordingly. Needless to say, anything observed hereinabove shall not be taken to be an expression of opinion on the merits of the controversy.

Writ petition stands disposed of in the aforementioned terms.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 11, 2017
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No