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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1432/2012

MAC EXPORTS (INDIA) ..... Petitioner

Through: Mr Raj Panjwani, Sr. Advocate with Ms Puja Shrivastava, Advocate.

versus

COMMISSIONER OF CUSTOMS (EXPORT) ..... Respondent

Through: Mr Sameer Jain, Standing counsel with Mr Mark Wright, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **30.11.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "B) An appropriate Writ, Order or direction in the nature of Mandamus of Certiorary or any other appropriate Writ or Order, directing the Respondent to de-freeze the drawback account of the petitioner and allow petitioner to access its funds in the said account."

2. The short question involved in the present petition is whether the respondent's action of freezing the drawback account of the petitioner and recovering the amount from the petitioner is arbitrary and unreasonable.

3. Briefly stated, the relevant facts necessary to address the controversy

involved in the present petition are as under:-

3.1 The petitioner is a partnership firm and is engaged in the business of export of readymade garments since 1982. On 23.08.2006 petitioner received a letter from the Joint Commissioner of Customs, Export stating that a matter of fraudulent transfer of money as Supplementary Drawback amount by other exporters is being enquired into by the customs office. Further, the petitioner was also required to provide copies of receipted supplementary claims and other relevant documents.

3.2 On 09.09.2006, the petitioner replied to the said letter and provided all documents against which the supplementary drawback was sanctioned including Bank Certificates of Export and Realisation, Invoices, Shipping Bills for Export etc. The petitioner also informed that the token numbers endorsed on the supplementary drawback applications are not readily available with them and will be submitted as and when they are traced.

3.3 Subsequently, by the letter dated 11.09.2006, the petitioner informed the respondent that certain token numbers had been traced out and requested the respondent to de-freeze their drawback account. Thereafter, the petitioner sent various letters reiterating its request to de-freeze its drawback account and to release the amount of ₹31,15,947/- blocked by the respondent.

3.4 By letter dated 03.10.2007, the petitioner informed the respondent that out of the total claim of ₹28,11,020/-, the tokens relating to the claims aggregating ₹15,60,251/- were available and tallied with the department; however, token numbers relating to claims aggregating ₹12,50,769/- were not available. The petitioner again requested the respondent to de-freeze their drawback account to the extent of the amounts tallied with the department records and balance amount of ₹12,50,769/- could be retained till further reconciliation.

3.5 On 30.07.2009, the respondent replied to the various letters of the petitioner stating that the respondent required the submission of supplementary drawback applications filed with the department along with the token numbers allotted in respect of the applications. On 17.12.2009, respondent demanded a sum ₹13,10,973/-, which reflected the amount credited to the petitioner's account in respect of which there were no supplementary claims filed by the petitioner.

3.6 On 04.03.2010, the petitioner responded to the respondent stating that the tokens relating to claims of ₹18 lakhs have been tallied with the department and for the balance amount of ₹13 lakhs, tokens were not traceable. The petitioner also deposited all the relevant documents along with bank realisation certificates and the certificate from the chartered accountants against the shipping bills which correspond to the said amount.

3.7 By letter dated 29.09.2011, respondent informed the petitioner that the department is conducting a verification with respect to the genuineness of supplementary claims filed manually, wherein the token numbers are issued to the exporter and thereafter the claim is processed manually. The respondent also confirmed that ₹30,03,947/- against forty shipping bills had been transferred, out of which amount of ₹16,92,974/- against twenty-one shipping bills tallied with the records and the remaining amount of

₹13,10,973/- did not tally with the records for which the said amount was required to be deposited with interest.

3.8 On 07.12.2011, petitioner sent a letter to the respondent stating that they had approached the respondent for inspection on various occasions - on 19.10.2011, 27.10.2011, 04.11.2011 and 09.11.2011 - and were provided copies of the Register on 22.11.2011 to locate the corresponding token numbers. The records provided were ineligible and incomplete therefore, the petitioner was unable to tally the records

4. The counter affidavit filed on behalf of the respondent indicates that respondents had frozen the accounts of exporters in order to investigate the fraudulent drawback claims. It is stated that the respondent had found that in some cases, the amount of drawback was abnormally high. On verification with the details of the supplementary drawback claims as entered in the relevant register, it was found that the register did not contain the corresponding entries. This indicated that supplementary claims had been sanctioned and processed through computer systems and the amount had been transferred to the banks of the exporters electronically; but as there were no corresponding entries in the register, it was obvious that the login ID and password of the customs officers had been misused to process the fraudulent drawback claims. It is pointed out that this matter was referred to CBI for investigation.

5. It is in the aforesaid context that the bank accounts of several exporters including the petitioner had been frozen.

6. However, in the present case, the petitioner had admittedly deposited

all documents including certificates from chartered accountants to establish the genuineness of the claims against which it had received the amounts of duty drawback. The tokens issued to the petitioner in most cases had been traced and tallied with the records of the respondent.

7. The only reason why the petitioner's accounts have not been de-frozen is because the petitioner has been unable to tally certain token numbers. The same are also not available in the records of the respondent.

8. The non-availability of token numbers cannot be a ground for not de-freezing the petitioner's accounts. Admittedly, the investigations carried out have not revealed any irregularity in the drawback claims by the petitioner. The petitioner, on its part, has supplied all the documents to substantiate the drawback claims received by it including the corresponding shipping bills.

9. Mr Jain, the learned counsel for the respondent fairly states that an investigation was carried out and a charge sheet has also been filed against those exporters, who have been found to be involved in the scam. He states that the petitioner's name does not feature in the list of those exporters.

10. In view of the above, there is no material to indicate that the petitioner had indulged in forging any of the documents and/or had indulged in any fraudulent acts to claim duty drawback in excess of its entitlement.

11. The petition is, accordingly, allowed.

12. The learned counsel for the petitioner does not press for any of the prayers other than prayer (b) since it is stated that the amount has already been frozen in a fixed deposit pursuant to the order dated 26.02.2014 and the

petitioner would be satisfied if the proceeds of the said FDR are released to the petitioner. It is so directed.

VIBHU BAKHRU, J

NOVEMBER 30, 2017
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