IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.16744 AND 16745 OF 2013
AND
M.P.NOS.1 AND 1 OF 2013

M/s. Knitwin International,
rep. by its Partner, Mr.K.K. Sreenivasan.
...Petitioner in both W.Ps.

Vs.

1. The Deputy Commissioner of Customs,
Inland Container Depot, Concor,
Veerapandi, Tirupur - 641 605.

2. The Superintendent of Customs,
Inland Container Depot, Concor,
Veerapandi, Tirupur - 641 605.
...Respondents in both W.Ps.

Prayer in W.P.No.16744 of 2013 :-
Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, pertaining to the order-in-original No.64 of 2012, BRC 21.07.2012 of the first respondent and to quash the same.

Prayer in W.P.No.16745 of 2013 :-
Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records, pertaining to the notice dated 26.03.2013, in C.No.VIII/48/247/2012- ICD Concor of the second respondent and to quash the same.

For Petitioner in both W.Ps. : Mr.G.Derrick Sam

For Respondents in both W.Ps. : Mr.S.R. Sundar
Special Panel Counsel

COMMON ORDER

Heard Mr.G.Derrick Sam, the learned counsel appearing for the petitioner and Mr.S.R. Sundar, the learned Special Panel Counsel for the respondents.

2. The petitioner has filed these Writ Petitions, challenging the order-in-original, dated 21.07.2012, directing the petitioner to pay a sum of Rs.1,60,640/-, being the draw back, which was availed by the petitioner under Section 75 of the Customs Act, 1962, and the consequential recovery notice, dated 26.03.2013.

3. The impugned order-in-original was passed on the ground that the petitioner failed to produce evidence of realization of export proceeds in respect of the exported goods within the period allowed under the Foreign Exchange Maintenance Act (FEMA) and Central Excise Duties and Service Tax Drawback Rules, 1995 (for short Rules).

4. According to the petitioner, well within the period of one year, i.e., five months of availment of the drawback, the petitioner has produced the Bank Realization Certificate. However, it appears that the Department did not notice the same, and issued the impugned order-in-original, in pursuance thereto, the notice of recovery, dated 26.03.2012, was issued, which was challenged in W.P.No.16745 of 2013.

5. In terms of the Rules 16A (4) of the said Rules, where, the sale proceeds are realized by the exporter, after the amount of drawback has been recovered under sub-rule (2) of sub-rule (3) and the exporter produces evidence about such realization within the period of three months from the date of realization of the sale proceeds, the amount of drawback, so recovered, shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant, provided, the sale proceeds have been realized within the period permitted by the Reserve Bank of India (R.B.I.). Since the Stay Petitions filed in these Writ Petitions were dismissed, and in probabilities, the amount should have been recovered. If that is so, and if the petitioner produces evidence to show that the sale proceeds have been realized within the time provided by the R.B.I., which is one year in the instant case, then, the petitioner would be entitled for being repaid the amount, so recovered. However, it is not very clear as to whether such recovery has been done from the petitioner.

6. Be that at it may, the petitioner's case is that, within a period of one year, i.e., five months of availment of the drawback (26.09.2008), the amount has been realized and Bank

Realization Certificate was issued. Therefore, if such is the factual position, then, the petitioner cannot be proceeded against by recovering the drawback or in the event, it has been recovered, he is entitled to the prayer for repayment to be considered in accordance with drawback rules.

7. For the above reasons, these Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner is directed to appear before the first respondent and produce proof to show that the Bank Realization Certificate was available well within the period of one year stipulated under the Scheme. If the proof is produced, the first respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law as expeditiously as possible. It is well open to the first respondent, to verify the genuineness of the stand taken by the petitioner as well as the Bank Realization Certificate. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sd/dna

To

1. The Deputy Commissioner of Customs,
Inland Container Depot, Concor,
Veerapandi, Tirupur - 641 605.

2. The Superintendent of Customs,
Inland Container Depot, Concor,
Veerapandi, Tirupur - 641 605.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.5263
+2ccs to Mr.S.R.Sundar, Advocate, S.R.No.5987 & 5121

Writ Petition Nos.16744
and 16745 of 2013

CS/13/02/18