

GURBAX SINGH
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

CWP No.22829 of 2018

Date of decision: 22.11.2018

M/s Famina Knit Fabs

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Jagmohan Bansal, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP No.22829 and 25370 of 2018, as according to the learned counsel for the petitioner, the issue involved in both the petitions is identical. However, the facts are being extracted from CWP No.22829 of 2018.

2. CWP No.22829 of 2018 has been filed by the petitioner under Articles 226/227 of the Constitution of India for quashing the order dated 8.8.2018, Annexure P.13 whereby respondent No.3 –Additional Commissioner of Customs (Export), New Delhi has confirmed demand of duty drawback even for the period prior to five years. Further prayer has been made for stay of the impugned order during the pendency of the present writ petition.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.22829 of 2018 may be noticed. The petitioner – a partnership concern having its office at Ludhiana is engaged in the manufacture and export of readymade garments. The petitioner unit was established in the year 1996 and started export in the year 2000. The petitioner as per prescribed procedure, exported goods claiming benefit of drawback in the shipping bill itself. Material was physically examined, samples were drawn, value was assessed and thereafter permission to export was granted. Report was countersigned by Assistant/Deputy Commissioner of Customs. In many cases, value for the purpose of drawback was ordered to be reduced. On 31.12.2012, officers of respondent authorities examined and detained goods of the petitioner lying at ICD, Tughlakabad, New Delhi. The respondent authorities examined 848 corrugated boxes having men's T-shirts of different sizes and thereafter vide panchnama dated 31.12.2012 detailed the said boxes. The petitioner requested for release of the said containers. Vide letter dated 20.2.2013, Annexure P.4, the respondents provisionally released the containers subject to furnishing of bond. The respondents conducted market enquiry with respect to 9 shipping bills and found that market price of goods was ₹ 2.28 crores though declared value was ₹ 4.71 crores. The petitioner continued to export goods post search. The customs authorities permitted export of goods but did not release duty drawback benefit on account of direction issued by Directorate of Revenue Intelligence (DRI). The petitioner visited the office of DRI with a request to release duty drawback benefit. The DRI called a report from the office of Customs who vide report dated 21.5.2013 confirmed that they had 100% examined consignments of the petitioner. The petitioner filed CWP No.20206 of 2013 in this court seeking directions to DRI and Customs

CWP No.22829 of 2018

authorities to release drawback benefits. Vide order dated 12.9.2013, Annexure P.7, this Court directed DRI, Ludhiana to decide claim of the petitioner. Vide letter dated 17.10.2013, Annexure P.8, the DRI informed the petitioner that they had issued no objection certificate to the customs. Accordingly, the customs authorities released duty drawback benefits. During search, the DRI recovered print out of few emails which indicated that the petitioner had issued parallel invoices showing value of goods lower than the value declared before customs. As per overseas report, the value declared before Indian customs was 3 to 17 times more than the value declared before UAE customs. Respondent No.3 on the basis of investigation concluded that the petitioner had misdeclared value of the goods and wrongly availed duty drawback. Vide show cause notice dated 11.9.2017, Annexure P.9, respondent No.3 called upon the petitioner to show cause as to why drawback to the tune of ₹ 16,66,01,985/- should not be recovered from the petitioner. The demand had been raised for the period from 2010-11 to December 2012. The petitioner filed CWP No.38 of 2018 before this Court seeking quashing of show cause notice on the ground that demand could not be raised beyond reasonable period and it could not be more than five years. The said petition was disposed of vide order dated 8.1.2018, Annexure P.10 with liberty to the petitioner to contest the show cause notice and also to make an application before the authority to decide the issue of limitation as a preliminary ground. The petitioner filed letters dated 12.5.2018 and 21.6.2018, Annexures P.11 and P.12 pointing out the findings of this court on the question of limitation. According to the petitioner, respondent No.3 decided the matter on merits without informing the petitioner. The show cause notice was upheld and the question of

limitation had been mechanically disposed of. The demand was confirmed even beyond five years. Hence the instant petitions by the petitioner.

4. We have heard learned counsel for the petitioner.

5. After pursuing the averments made in the petition and hearing learned counsel for the petitioner, we find that the petitioner has an alternative efficacious remedy of appeal against the impugned order.

6. The Apex Court in *Commissioner of Income Tax and others vs. Chhabil Dass Agarwal*, (2013) 357 ITR 357, considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded as under:-

“14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under [Section 148](#) of the Act in exercise of its jurisdiction under [Article 226](#) when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under [Article 226](#) despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under [Article 226](#). (See: [State of U.P. vs. Mohammad Nooh](#), AIR 1958 SC 86; [Titaghur](#)

Paper Mills Co. Ltd. vs. State of Orissa, (1983) 2 SCC 433; *Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; *State of H.P. vs. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499).

16. The Constitution Benches of this Court in *K.S. Rashid and Sons vs. Income Tax Investigation Commission*, AIR 1954 SC 207; *Sangram Singh vs. Election Tribunal, Kotah*, AIR 1955 SC 425; *Union of India vs. T.R. Varma*, AIR 1957 SC 882; *State of U.P. vs. Mohd. Nooh*, AIR 1958 SC 86 and *K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras*, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: *N.T. Veluswami Thevar vs. G. Raja Nainar*, AIR 1959 SC 422; *Municipal Council, Khurai vs. Kamal Kumar*, (1965) 2 SCR 653; *Siliguri Municipality vs. Amalendu Das*, (1984) 2 SCC 436; *S.T. Muthusami vs. K. Natarajan*, (1988) 1 SCC 572; *Rajasthan SRTC vs. Krishna Kant*, (1995) 5 SCC 75; Kerala SEB vs. Kurien E. Kalathil, (2000) 6 SCC 293; *A. Venkatasubbiah Naidu vs. S. Chellappan*, (2000) 7 SCC 695; *L.L. Sudhakar Reddy vs. State of A.P.*, (2001) 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra*, (2001) 8 SCC 509; *Pratap Singh vs. State of Haryana*, (2002) 7 SCC 484 and *GKN Driveshafts (India) Ltd. vs. ITO*, (2003) 1 SCC 72).

17. In *Nivedita Sharma vs. Cellular Operators Assn. of India*, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the

statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. In *Thansingh Nathmal v. Supdt. of Taxes*, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, 141 ER 486 in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to

cases of the second class. The form given by the statute must be adopted and adhered to.’ The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.*, 1935 AC 532 ([PC](#)) and [Secy. of State v. Mask and Co.](#), AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

14. [In *Mafatlal Industries Ltd. v. Union of India*](#), (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under [Article 226](#)—or for that matter, the jurisdiction of this Court under [Article 32](#)—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under [Article 226/Article 32](#), the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””(See: [G. Veerappa Pillai v. Raman & Raman Ltd.](#), AIR 1952 SC 192; [CCE v. Dunlop India Ltd.](#), (1985) 1 SCC 260; [Ramendra Kishore Biswas v. State of Tripura](#), (1999) 1 SCC 472; [Shivgonda Anna Patil v. State of Maharashtra](#), (1999) 3 SCC 5; [C.A. Abraham v. ITO](#), (1961) 2 SCR 765; [Titaghur Paper Mills Co. Ltd. v. State of Orissa](#), (1983) 2 SCC 433; *H.B. Gandhi v. Gopi Nath and Sons*, 1992 Supp (2) SCC 312; [Whirlpool Corpn. v. Registrar of Trade Marks](#), (1998) 8 SCC 1; [Tin Plate Co. of India Ltd. v. State of Bihar](#), (1998) 8 SCC 272; [Sheela Devi v. Jaspal Singh](#), (1999) 1 SCC 209 and [Punjab National Bank v. O.C. Krishnan](#), (2001) 6 SCC 569)

18. [In *Union of India vs. Guwahati Carbon Ltd.*](#), (2012) 11

SCC 651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram v. Municipal Committee, Chheharta*, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.””

7. In view of the above, we are not inclined to entertain the instant writ petitions to grant relief to the petitioners by exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India. However, the petitioners are relegated to the alternative remedy of filing appeal against the impugned order, before the authorities below within one month from the date of receipt of a copy of this order. In case, the said appeal is filed within the stipulated period, the same shall not be dismissed on the ground of limitation. Accordingly, both the petitions stand disposed of.

(Ajay Kumar Mittal)
Judge

November 22, 2018
'gs'

(Manjari Nehru Kaul)
Judge

Referred to reporter or not **Yes**

Whether reasoned or speaking **Yes**