IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-38-2018 (O&M)
Date of decision:- 08.01.2018

M/s Famina Knit Fabs through its partner Mr. Vijay Kumar Miglani

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioner has challenged a notice dated 11.09.2017 calling upon the petitioner to show cause why the duty drawback availed by the petitioner ought not to be refunded.

2. Mr. Bansal, the learned counsel appearing on behalf of the petitioner, submits that a show cause notice cannot be issued in respect of a duty drawback availed of three years prior thereto in view of Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995. He further submits that in any event a show cause notice can be issued only within five years of the relevant date which according to him in the present case is the date when the duty was refunded to the petitioner.

3. In our view, there is no warrant for interfering with the show cause notice at this stage. The petitioner ought to contest the show cause notice. Admittedly, at least a part of the duty drawback was availed of less than five years prior to the date of the show cause notice. The authorities under the

Customs Act, 1962 ought in the first instance to bifurcate the amount even assuming that the submission on the ground of limitation is well founded.

4. The contention that the authority who issued the show cause notice is bound to decide against the petitioner is not well founded. The authority would have to pass a reasoned order dealing with all the contentions raised by the petitioner and that is the sufficient safeguard in respect of the petitioner's rights.

5. The writ petition is accordingly disposed of with liberty to the petitioner to contest the show cause notice. The petitioner shall be at liberty to make an application before the authority to decide the issue of limitation as a preliminary ground. If the issue is decided in favour of the petitioner, the matter would come to an end on that ground alone. It is clarified that if, however, the authority decides the issue against the petitioner, the authority shall proceed to pass the final order on the show cause notice on merits as well.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

08.01.2018
Amodh

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√