IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 25.06.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR
W.P.No.16881 of 2019
&
W.M.P.No.16471 of 2019

PRIMO SHOES
Rep. By its General Manager K Sugra
'Anugraha Apartments'
C- Block, 1A, 1st Floor
No.19, Nungambakkam High Road
Chennai – 600 034 .. Petitioner

Vs.

1.The Joint Commissioner of Customs (BRFC)
Office of the Commissioner of Customs, Chennai-IV
"Customs House"
No.60, Rajaji Salai
Chennai – 600 001

2.The Joint Secretary (Drawback)
Directorate of Drawback
Department of Revenue
Ministry of Finance
'Jeevandeep Building'
1, Parliament Street
New Delhi- 110 001

3.Central Board of Indirect Taxes & Customs
Department of Revenue
Ministry of Finance
Government of India
New Delhi .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Show Cause Notice dated 24.01.2019 bearing reference No.SR-334/2018-BRFC-Ch.IV on the file of the first respondent, the Joint Commissioner of Customs (BRFC), Office of the Commissioner of Customs, Chennai-IV wrongly communicated as No.SR-389/2018-BRFC-Ch.IV to the petitioner and quash the same and consequently direct the second and third respondents to issue necessary clarification with regard to the applicability of All Industry Rates of duty drawback for the leather products as per Circular Nos.83/2003 and 97/2003 dated 18.09.2003 and 14.11.2003 respectively in the post GST era.

For Petitioner : Mr.A.Ravi & Mr.A.Venkatesh Kumar
for M/s.Gupta and Ravi

For Respondents: Mr.M.Santhanaraman
Senior Standing Counsel for R1 and R3

Mr.G.Karthikeyan
Assistant Solicitor General for R2

O R D E R

Mr.A.Ravi and Mr.A.Venkatesh Kumar of M/s. Gupta and Ravi (Law Firm) are before this Court on behalf of writ petitioner. Mr.M.Santhanaraman, learned senior Standing Counsel on behalf of Respondents 1 and 3 and Mr.G.Karthikeyan, learned Assistant Solicitor General of India on behalf of second respondent are before this Court.

2. With the consent of all the three learned counsel, the main writ petition itself is taken up, heard out and is being disposed of.

3. It is submitted by all the three learned counsel without any disputation that this matter is covered by an earlier order dated 12.04.2019 made by this Court in W.P.No.15427 of 2019.

4. For the sake of convenience and ease of referrence, entire order dated 12.06.2019 in W.P.No.15427 of 2019 is extracted/reproduced infra and the same reads as follows:

> Mr.Ravi, learned counsel of M/s. Gupta and Ravi (Law Firm) for sole writ petitioner, Mr.Pramod Kumar Chopda, learned Standing Counsel for first repsondent and Mr.G.Karthikeyan, learned Assistant Solicitor General of India on behalf of respondents 2 and 3 are before this Court.
>
> 2. With the consent of all the aforesaid counsel i.e., writ petitioner's counsel, learned standing counsel for first respondent and learned Assistant Solicitor General of India for Respondents 1 and 2, the main writ petition itself is taken up, heard out and is being disposed of.
>
> 3.Short facts shorn off unnecessary details and particulars which are imperative for appreciating this order are as follows:
>
> a) The petitioner is a manufacturer and exporter of leather footwear and annual turnover of the petitioner for the financial year 2017-18 is Rs.113.67 Crores.

b) It is petitioner's case that writ petitioner is entitled to drawback as notified under Customs and Central Excise Duties Drawback Rules, 1995 till 30.06.2018 and under the Customs and Central Excise Duties Drawback Rules 2017 on and from 01.07.2017.

c) Suffice to say that the instant writ petition has been filed assailing a 'show-cause notice' ('SCN' for brevity) dated 14.02.2019 bearing reference SR-368/2018-BRFC-Ch.IV issued by the first respondent. Vide aforesaid impugned SCN, writ petitioner was called upon to show-cause as to why All Industry Rate of Drawback claim for the finished leather / lining leather portion of inputs used in the processing of exported goods should not be rejected and as to why the Brand Rate of Drawback should not be fixed for the export goods based on the eligible inputs used in the manufacture of export goods other than the finished/lining leather;

d) Instant writ petitoner has been filed, assailing the impugned SCN on the primary ground that the first respondent is not clear, as to whether circular issued by the third respondent Board in this regard i.e., Circular No.83/2003-Customs dated 18.09.2003, applies to the case on hand or not.

4. In the aforesaid backdrop, learned counsel for writ petitioner submitted that the impugned SCN says that aforesaid circular being Circular No.83/2003-Customs dated 18.09.2003 (hereinafter 'said circular') appears to be not applicable in this case post GST era. Learned counsel for writ petitioner submitted that there is a doubt in the mind of the first respondent as to whether said circular will not be applicable post GST era i.e., Post 01.07.2017.

5. Responding to the aforesaid submission, learned standing counsel for first respondent submitted that though the term 'appears' has been used, it is only a matter of semantics, as first respondent has clearly mentioned the reason as to why said circular is not applicable. It was pointed out that there is no central excise duty qua leather goods, the exporter is eligible for credit for the GST paid on the processing of rawhides and therefore, the drawback claim made post GST era period deserves to be rejected. It was pointed out that this has been clearly articulated in the impugned SCN itself.

6. Before proceeding further, this Court has taken into account the obtaining position with regard to interfering in writ jurisdiction when SCNs are challenged. Hon'ble Supreme Court in Kunisetty Satyanarayana case [Union of India and another Vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28] has clearly held that exercise of writ jurisdiction for quashing SCNs when SCNs are assailed in writ jurisdiction is only in rare and exceptional cases, though it is a discretionary jurisdiction. Relevant paragraphs in Kunisetty Satyanarayan case are paragraphs 15 and 16 and the same read as follows:

'15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.'

7. With regard to rule of discretion, two judgments are of relevance and they are Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] and K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Though Satyawati Tandon case and K.C.Mathew case pertain to alternate remedy, Hon'ble Supreme Court has held that alternate remedy is essentially not an absolute rule. It is a rule of discretion and it is not a rule of compulsion, but it should be applied with utmost rigour when it comes to matters pertaining to taxes, cess, fees etc., In other words, when it comes to matters pertains to fiscal law.

8. The rare and exceptional cases where writ jurisdiction will be exercised for quashing SCNs are those

a) where SCN issued without jurisdiction;

b) where SCN reopens a well settled position of law;

c) where SCN has been issued after prejuding the issue or

d) where the SCN has been issued owing to malafides.

9. To be noted, the aforesaid adumbration is not exhaustive, but are broad heads only for the limited purpose of disposal of the instant writ petition and the application of same also depends on the facts and circumstances of each case.

10. In the light of the principles laid down by Hon'ble Supreme Court with regard to interference in writ jurisdiction qua challenge to SCNs, as it is nobody's case that this case falls under any one of the rare exceptions set out supra, this Court refrains from interfering with the impugned SCN.

11. However, learned Assistant Solicitor General, who is before this Court, submitted that the third respondent Board will issue a clarification qua said circular. If this is done that will put an end to the controversy in instant writ petition and that will douse the anxiety of the writ petitioner in the instant writ petition.

12. In the light of narrative supra, impugned SCN is not quashed, but kept in abeyance for period of eight weeks from the date of receipt of a copy of this order. Within the aforesaid eight weeks, the third respondent Board shall issue a clarification particularly with reference to issue raised by the writ petitioner pertaining to applicability of said circular post GST era. Depending on the clarification, either show-cause will get revived and carried to its logical end or dropped, obviously post eight weeks.

With the above direction, the instant writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.'

5. In the light of the submission made without disputation or disagreement that this matter is covered by the above order, the following order is passed in this writ petition:

a) Impugned show-cause notice being 'show-cause notice' ('SCN' for brevity) dated 24.01.2019 bearing reference No.SR-334/2018-BRFC-Ch.IV is not quashed, but is kept in abeyance for a period of eight weeks from the date of receipt of a copy of this order.

b) Within the said period of eight weeks, the third respondent Board shall issue a clarification particularly with reference to the issue raised by the writ petitioner pertaining to applicability of said Circular i.e., Circular No.83/2003 in the post GST regime i.e., post 01.07.2017. Depending on the clarification, the impugned SCN will either get revived and carried to its logical end or dropped obviously post eight weeks.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Joint Commissioner of Customs (BRFC)
Office of the Commissioner of Customs, Chennai-IV
“Customs House”
No.60, Rajaji Salai
Chennai – 600 001

2.The Joint Secretary (Drawback)
Directorate of Drawback
Department of Revenue
Ministry of Finance
'Jeevandeep Building'
1, Parliament Street
New Delhi- 110 001

3.Central Board of Indirect Taxes & Customs
Department of Revenue
Ministry of Finance
Government of India
New Delhi

+1cc to M/s.Gupta and Ravi, Advocate sr.52288
+1cc to Mr.M.Santhanaraman, Advocate sr.52093
+1cc to Mr.G.Karthikeyan, Advocate sr.53327

W.P.No.16881 of 2019 &
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nr 31/07/2019