IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.15342 of 2019

Date of Decision:-18.10.2019

Century Knitters (India) Ltd. & Ors.

......Petitioners.

Versus

Union of India & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

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

Mr. Sunish Bindlish, Advocate for DRI.

Mr. Sourabh Goel, Advocate for Customs.

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JASWANT SINGH, J.

1. The Petitioners through instant Petition under Article 226 of the Constitution of India are seeking quashing of show cause notice dated 31.7.2014 (**Annexure P-1**) whereby declared Free on Board (for short 'FOB') value of the goods already exported has been proposed to be rejected and drawback disbursed post export of goods has been demanded under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (for short 'Drawback Rules, 1995').

Facts:

2. The few facts emanating from record are that Rajesh

Dhanda-Petitioner No. 5 is Managing Director of Petitioner No. 1 & 2 and proprietor of Petitioner No. 3 & 4. The Petitioners/Manufacturer Exporters during the period 2007-2012 exported textile garments claiming benefit of duty drawback as permissible under Duty Drawback Rules, 1995, which were framed vide Notification No. 37/95-CUS (NT) dated 26.05.1995, in exercise of power conferred by Section 75 of Customs Act, 1962 (for short '1962 Act'), Section 37 of the Central Excise Act, 1944 and Section 93A of the Finance Act, 1994.

As required under Section 50 of the 1962 Act, the Petitioners as and when exported goods filed shipping bill declaring description, quantity, value, name of foreign buyer etc. A team of Custom Officers i.e. Inspector, Superintendent and Assistant Commissioner physically verified export goods. The goods were examined and assessed in terms of Section 17 of the 1962 Act. It would be relevant to notice that prior to 8.4.2011, there was no self assessment which was introduced by Finance Act, 2011 w.e.f 8.4.2011. The Custom Officers permitted export of goods in terms of Section 51 of the Customs Act, 1962. As conceded by both parties, no separate assessment order was passed and drawback was released after export of goods.

3. The Petitioners realized export proceeds, however Directorate of Revenue Intelligence (DRI) initiated an investigation against the Petitioners alleging that Petitioners are fraudulently availing duty drawback by grossly overvaluing the goods in the export documents. The DRI searched various premises of the Petitioners on

26.4.2012 and concluded that Petitioners had mis-declared value of goods which were exported upto 26th April' 2012. On the basis of investigation conducted by DRI, Joint Commissioner of Customs, (SIIB), ICD, Delhi i.e. Respondent No. 3 issued common impugned Show Cause Notice dated 31.7.2014 (**Annexure P-1**) calling upon the Petitioners to show cause as to why declared FOB value of exported goods should not be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 (for short 'Valuation Rules, 2007') read with Section 14 of the 1962 Act and re-determined in terms of Rules 6 & 8 of the Valuation Rules, 2007. The Petitioners were further called upon to show cause as to why duty drawback should not be disallowed and recovered from them under Rule 16 of Drawback Rules, 1995.

4. Counsel for the Petitioners has raised three issues namely (i) Effect of repeal of duty drawback rules 1995 w.e.f. 01.10.2017 (ii) Absence of mechanism to raise demand of duty drawback and (iii) Power of Respondent to reassess value of goods already exported.

5. After having scrutinized record of the case and heard arguments of both sides, we find that issues raised in present petitions are squarely covered by our judgment dated 20/09/2019 in **Famina Knit Fabs Vs UOI, 2019-TIOL-2208-HC-P&H-Cus** and judgment dated 04.10.2019 in **Jairath International and another Vs UOI CWP No. 702 of 2017**.

6. In the present writ petitions, concededly identical questions as raised in **Famina Knit Fabs & Jairath International**

are raised. In both judgments, we have held that inspite of availability of alternative remedy available under 1962 Act, writ petition is maintainable in view of involvement of pure questions of law as well jurisdiction and law enunciated by Hon'ble Supreme Court and followed by this court time and again.

Relying upon judgment of this court in the case of **Hindustan Construction Company Ltd. Vs State of Haryana 2005 (28) RCR (Civil) 352** as upheld by Hon'ble Supreme Court in **State of Haryana Vs Hindustan Construction Company Ltd. (2017) 9 SCC 463,** we have held that in view of Rule 20(2) of Drawback Rules, 2017 saving few rights/action accrued under Drawback Rules, 1995 show cause notice issued after 1.10.2017 invoking Rule 16 of Drawback Rules, 1995 is not sustainable.

While taking cue from Sections 28, 28AAA & 75 of 1962 Act and relying upon judgment of Hon'ble Supreme Court in the case of **Commissioner of Central Excise versus Larsen and Toubro 2015 (39) STR 913** as well this court in the case of **Laqshya Media Pvt. Ltd. Vs State of Punjab and Others CWP No. 4215 of 2016,** we have held that mechanism is absent in Duty Drawback Rules, 1995 thus demand under Rule 16 of Drawback Rules, 1995 is not sustainable.

While adjudicating **Famina Knit Fabs Vs UOI, 2019-TIOL-2208-HC-P&H-Cus,** we had left open question of power of Respondent-department to reassess value of goods which have already been exported out of country, however keeping in view law laid by Hon'ble Supreme Court recently in the case of **ITC Vs**

Commissioner of Central Excise 2019-TIOL-418-SC-CUS-LB, we in the case of **Jairath International and another Vs UOI CWP No. 702 of 2017** decided on 4.10.2019 have held that Respondent has no power to reassess value of goods already exported.

7. Thus in view of our findings in the case of **Famina Knit Fabs Vs UOI 2019-TIOL-2208-HC-P&H-Cus** and **Jairath International and another Vs UOI CWP No. 702 of 2017** decided on **4.10.2019**, the present writ petition deserves to be allowed. Accordingly, writ petition is allowed and impugned show cause notice dated 31.7.2014 qua Petitioners is hereby quashed.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

October 18th, 2019
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***