IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.14846 of 2019(O&M)

Date of Decision:-18.10.2019

Zee Knits & Weaves Pvt. Ltd & Anr.

......Petitioners.

Versus

Union of India & Ors.

......Respondents.

2.

CWP No.14867 of 2019(O&M)

Worldwide Tradelinks & Anr.

......Petitioners.

Versus

Union of India & Ors.

......Respondents.

AND

CWP No.15329 of 2019(O&M)

M/s Famina Knit Fabs & Anr.

......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 (in all the cases).

Mr. Sunish Bindlish, Advocate for respondent nos.1 & 2-DRI.

Mr. Sourabh Goel, Advocate for respondent no.3-Customs.

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JASWANT SINGH, J.

1. By this common order three Civil Writ Petitions bearing No. 14846, 14867, and 15329 of 2019 raising identical issues are disposed of. The Petitioners through instant petitions under Article 226 of the Constitution of India are seeking quashing of order-in-original whereby declared Free on Board (for short 'FOB') value of the goods already exported has been rejected and drawback disbursed post export of goods has been demanded and ordered to be recovered 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 in two of writ petitions bearing No. 14846 & 14867 of 2019, the Petitioners/Manufacturer Exporters during the period 2010-2011 to 27.12.2012 exported textile goods 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 and noted on shipping bill "as per invoice and packing list" or "value reduced for the purpose of duty drawback". 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.

2.1 The Petitioner realized export proceeds nevertheless 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 27.12.2012 and concluded that Petitioners have mis-declared value of goods which were exported upto 27.12.2012. On the basis of investigation conducted by DRI, Additional Commissioner of Customs (Export)-Respondent No. 3 issued a Show Cause Notice dated 17.4.2017 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.

The Respondent No. 3 vide impugned common order-in-original dated 31.3.2019 rejected contention of the Petitioners and upheld reduced FOB value and confirmed demand of duty drawback as proposed in the show cause notice. The Respondent while passing order-in-original dated 31.3.2019 imposed penalty upon Petitioner-exporters as well its partners/directors.

3. In third writ petition No. 15329 of 2019 goods were exported during 2010-2013 and Show Cause Notice was issued on 30.7.2018 which culminated into order dated 2.5.2019 whereby Respondent re-determined value of goods already exported and demanded duty drawback under Rule 16 of Drawback Rules 1995. The order dated 2.5.2019 passed by Respondent No. 3 is under challenge.

4. Counsel for the Petitioners has raised four issues namely (i) Reasonable period of limitation to issue show cause notice (ii) Effect of repeal of duty drawback rules 1995 w.e.f. 01.10.2017 (iii) Absence of mechanism to raise demand of duty drawback and (iv) 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.

On the question of reasonable period of limitation to issue show cause notice raising demand of duty drawback, relying upon judgment of Hon'ble Supreme Court in **State of Punjab versus Bhatinda District Co-Op. Milk P. Union Ltd.2007 (217) ELT 325** and this court in **Gupta Smelters Pvt. Ltd. versus Union of India 2019 (365) ELT 77 (P&H), GPI Textiles Limited versus Union of India 2018 (362) ELT 388 (P&H), CCE Vs Hari Concast (P) Ltd. 2009 (242) E.L.T. 12,** we have held that period of 5 years from the date of export/assessment is a reasonable period.

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 three writ petitions deserve to be allowed. Accordingly, all three petitions are **allowed** and impugned order-in-original dated 31.3.2019 (CWP No. 14846 & 14867 of 2019) and order-in-original dated 2.5.2019 (15329 of 2019) are hereby quashed.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

October 18th, 2019
Vinay

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