IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-05.09.2019

CWP No.18990 of 2015(O&M)

M/s Century Knitters (India) Limited & 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. Sourabh Goyal, Advocate for respondent nos.1, 3 & 4-UOI.

Mr. Sunish Bindlish, Advocate for respondent no.2-DRI.

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JASWANT SINGH, J.

1. M/s Century Knitters (India) Limited-Petitioner No.1 and M/s Rajesh Hosiery Mills Private Limited -Petitioner no.2 have approached this Court under Article 226 of the Constitution through their Managing Director Mr. Rajesh Dhanda, seeking the quashing of Order-in-Appeal No.744 to 746 dated 7.8.2015 (Annexure **P-13**) whereby the Commissioner (Appeals)-First Appellate Authority has dismissed the appeal of the petitioners filed against the Order-in-Original dated 09.1.2014 (P-7) passed by the Additional Commissioner of Customs, New Delhi.

2. Petitioner nos.1 & 2 are two sister concerns situated at Ludhiana, engaged in the manufacture and export of Textile Garments, namely, Knitted Gents Shirts and Knitted Track Suits. Both the petitioners in April 2012 brought their consignments for export at Inland Container Depot (ICD) Tuglaqabad, New Delhi and filed different shipping bills claiming the benefit of Duty Drawback. The Directorate of Revenue Intelligence, Ludhiana (DRI) doubting the declared value detained the export consignments and drew samples. The DRI on the basis of the samples conducted a market inquiry and based on the statements of different witnesses as well as Market Inquiry Report dated 31.05.2012 the DRI issued Show Cause Notice dated 25.10.2012 (**P-3**) whereby the declared value was proposed to be rejected in terms of the Customs Valuation (Determination of Value of Export Goods) Rules 2007. In the show cause notice, the redemption fine in lieu of confiscation and penalty under Section 114 and 114AA of the Customs Act, 1962 was also proposed. The show cause notice P-3 culminated into passing of Order-in-Original dated 09.01.2014 (**P-7**), whereby Adjudicating Authority imposed fine and penalty upon the petitioners. The Adjudicating Authority during course of adjudication allowed cross examination of witnesses including shopkeepers i.e. Partap Singh, Proprietor of M/s Kaysons Garments, Ludhiana and Dharmesh Sharma proprietor of M/s Nisha Collections from whom Market Inquiry was conducted in their cross examination categorically denied the visit of DRI Officers on their shops as well as their purported signatures on the alleged market inquiry report dated 31.05.2012.

3. The Adjudicating Authority however passed an Order-in-Original dated 09.01.2014 Annexure P-7 relying upon the statements of the Investigating Officers and the aforesaid witnesses of the Market Inquiry Report.

4. The petitioners filed a writ petition before this Court challenging the order in original, but were relegated to avail their remedy of appeal before the First Appellate Authority. However, vide subsequent orders dated 6.1.2015 and 12.03.2015 the Hon'ble High Court left the issue of examination of Market Inquiry Report by the CFSL and the Hand Writing Export to determine the alleged forgery open to be decided by the Appellate Authority.

5. The Appellate Authority vide impugned order dated 7.8.2015 (P13) has dismissed the appeals without going into the question of the alleged forgery. Hence the present writ petition seeking the quashing of Order-in-Appeal (**P-13**).

6. Mr. Jagmohan Bansal, Advocate for the Petitioners has contended that in view of the admissions made by the shopkeepers in their cross examination, it is apparent that the Market Inquiry Report dated 31.05.2012 (**P-2**) is forged. The Commissioner (Appeals) has wrongly ignored this aspect of the case. He further prayed that the said Market Inquiry Report be got examined from the CFSL or any Judicial Official to enquire into the authenticity of the said report subject to the petitioners bearing the costs of inquiry as also payment of exemplary costs in case the contentions of the petitioners is found to be incorrect.

7. Mr. Sunish Bindlish, Advocate for the DRI contends that the Market Inquiry Report is not the basis of the impugned Appellate Order and the petitioners have alternative remedy of filing an appeal before the Tribunal/CESTAT, Chandigarh Bench, therefore, the writ petition is not maintainable.

8. On being confronted with the fact that the impugned order dated 07.08.2015 (**P-13**) is an appealable order and the Appellate Tribunal is quite competent to deal with all the aforesaid factual issues raised by the petitioners, the counsel for the petitioners has agreed to file an appeal subject to the permission to petitioners to file an appeal before the CESTAT, Chandigarh Bench and without any objection of limitation being raised by the respondents before the Tribunal.

9. Mr. Sunish Bindlish, Advocate and Mr. Sourabh Goyal, Advocate, without any hesitation conceded to both the prayers of the learned Counsel for the petitioners.

10. We having heard the arguments of both the sides and also perused some of the Annexures find that there is some element of truth in the contentions of the petitioners that the Market Inquiry Report dated 31.05.2012 (**P-2**) is possibly forged, however, we do not find it appropriate to decide the issue while exercising writ jurisdiction under Article 226 of the Constitution. We further find that the Tribunal consisting of two members (Member Judicial and Member Technical) would be quite competent to deal with all the issues raised by the petitioners for proper adjudication. It is also conceded that at present the Tribunal is available at Chandigarh, therefore, there seems to be no difficulty for the petitioners to approach the Tribunal.

11. Accordingly, we relegate the petitioners to file their appeals before the CESTAT, Chandigarh and if the appeals are filed within one month the date of receipt of certified copy of this Order, the learned Tribunal shall preferably within next six months decide the appeals in accordance with law without going into the question of limitation. We hope and trust that the learned Tribunal shall deal with all the issues raised while deciding the appeals.

12. In view of the above, without expressing anything on the merits of the case, petition is disposed of in the above terms.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

September 05, 2019
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Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*