IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.32012 of 2019(O&M)

Date of Decision:-16.12.2019

Famina Knit Fabs through its Partner &Ors.

......Petitioners.

Versus

Commissioner of Customs, Inland Container Depot, Patparganj, New Delhi & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

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

Mr. Sourabh Goel, Advocate for the respondents.

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JASWANT SINGH, J.

1. The Petitioner No. 1 is a partnership firm, Petitioner No. 2 is a limited company and Petitioner No. 3 is partner of Petitioner No. 1 and Director of Petitioner No. 2. The Petitioners through instant petition under Article 226 of the Constitution of India is seeking quashing of Order-in-Appeal dated 29.08.2019 **(Annexure P-7),** Order-in-Original dated 08.08.2018 **(Annexure P-4)** and in alternative direction to Respondent-Commissioner (A), New Delhi to hear and to decide appeal on merits without insisting for pre-deposit as required under Section 129E of the Customs Act, 1962.

2. Few facts emerging from record are that the Additional

Commissioner of Customs, Tughlakabad-Adjudicating Authority vide Order dated 08.08.2018 **(Annexure P-4)** re-determined value of goods already exported and confirmed demand/Recovery of already paid duty drawback against Petitioner No. 1 & 2. The Adjudicating Authority also imposed penalties upon all the Petitioners. The Petitioners along with stay application filed appeals before Commissioner of Customs (A), New Delhi who vide Order-in-Appeal dated 29.08.2019 **(Annexure P-7)** dismissed all the appeals on the ground of non-compliance of mandatory requirement of pre-deposit under Section 129E of the Customs Act, 1962.

3. Counsel for the Petitioner contended that Petitioners have exported goods during 2010-11 to 27.12.2012 and show cause notice demanding already paid drawback was issued on 11.09.2017 i.e. after the expiry of five years from the date of substantial part of export. The Respondent in the absence of mechanism to raise demand of already paid duty drawback and absence of power to re-determine value of goods, which are already exported could not pass impugned order, re-determining value of goods already exported and raise demand/Recovery of duty drawback. The show cause notice as well as Order-in-Original in view of judgment dated 22.11.2018 passed by this Hon'ble Court in **Famina Knit Fabs Vs. Union of India and others, 2019-TIOL-2208-HC-P&H-CUS** was bad in the eyes of law. The present matter is squarely covered by judgment of this Hon'ble Court in the case of Petitioner itself, thus impugned orders deserve to be quashed. In alternative, he contended that Commissioner (A) may be directed to hear and decide appeal on merits without insisting for pre-deposit. The Petitioner has already paid a sum of Rs.45 Lakh**,** by way of bank guarantee of Rs.25 Lakh and cash Rs.20 Lakh; the manufacturing units of Petitioners are lying closed since 2014 and High Court has power to waive requirement of pre-deposit. In support of his contention, he relied upon judgment of Delhi High Court in the case of **Vega Auto Accessories (Pvt.) Ltd. Vs. Registrar, CESTAT 2018 (14) GSTL 7 (Del.), Shubh Impex Vs. Union of India 2018 (14) GSTL 4 (Del.), Nawal Kishore Singh Vs. Commissioner of Customs (Exports) 2019 (366) ELT 968 (Del.) and RDB Textiles Ltd. Vs. Commissioner of Central Excise, Kolkata-IV 2018 (362) ELT 431 (Cal.).** In all these cases, High Courts have waived or reduced requirement of pre-deposit.

4. Counsel for the Respondent is unable to distinguish facts of the present case from the facts of judgment cited by Petitioner, however he contended that requirement of pre-deposit is mandatory and appeal cannot be heard without compliance of requirement of pre-deposit. Ld. Commissioner (A) had no power to waive condition of pre-deposit, thus appeal has been rightly dismissed on the ground of non-compliance of requirement of pre-deposit.

5. Conceded position emerging from record is that Petitioner exported goods during 2010-11 to 27.12.2012, claiming benefit of duty drawback, which was sanctioned and released to Petitioners. The Directorate of Revenue Intelligence (for short 'DRI') conducted investigation and on the basis of investigation show cause notice raising demand/Recovery of drawback was issued. The questions of limitation, jurisdiction to re-determine value of goods already exported and mechanism to demand drawback under Rule 16 of Duty Drawback Rules, 1995 stand answered by this Court in the case of Petitioner itself.

6. Having heard arguments of both counsel and scrutinized record of the case, we find that in deserving cases this Court in writ jurisdiction under Article 226 of the Constitution may waive requirement of mandatory pre-deposit. In the judgments cited by counsel for Petitioner, High Courts have waived requirement of pre-deposit where matter was covered by some earlier judgment. In the present case, issue involved is squarely covered by judgment of this Court in the case of none else but Petitioner itself. We further find that manufacturing units of the Petitioners have already been closed. The Petitioners against the requirement of deposit of Rs.1.44 Crore under Section 129E of the Customs Act have already deposited a sum of Rs. 45 Lakh.

7. In view of our above findings, we at this stage do not find it appropriate to quash Order-in-Original dated 08.08.2018 **(Annexure P-4),** however we are inclined to accept alternative prayer of the Petitioners and accordingly set aside Order-in-Appeal dated 29.08.2019 **(Annexure P-7).** Commissioner of Customs (A), New Delhi is hereby directed to hear and decide appeals without insisting for further pre-deposit. The parties are directed to appear before Commissioner of Customs (A), New Delhi on **12.02.2020**.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 16, 2019
Vinay

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