203 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

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CWP-23321-2016 (O&M)
DECIDED ON:03.02.2020

M/S HERO EXPORTS

PETITIONER

VERSUS

UNION OF INDIA AND ORS.

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sudhir Malhotra, Advocate
for the petitioner.

Mr. Anshuman Chopra, Advocate
for the respondents.

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AJAY TEWARI, J (Oral):

This petition has been filed in the nature of certiorari for quashing the order-in-original dated 30.9.2016 (P-4) demanding drawback for the period October 1999 to December 2002 in respect of goods which were exported during that time. It may be mentioned here that earlier also the petitioner had challenged this notice in this Court wherein this Court has held as follows:

> "*[5] Since only a show cause notice has been issued and final order in response thereto is yet to be passed, we are of the considered view that all the contentions raised herein can be effectively gone into by the 3rd respondent on consideration of the reply to the show-cause notice which may further be supplemented by the petitioner alongwith the decisions cited before us. Needless to say that the issue of limitation raised by the petitioner would surely require consideration at the hands of 3 rd*

> *respondent who shall be obligated to deal with the same by passing a reasoned order, especially with reference to the case-law relied upon by the petitioner.*
>
> *[6] We thus dispose of this writ petition at this stage with liberty to the petitioner to submit a supplementary reply to the show-cause notice, whereupon the 3 rd respondent shall pass a reasoned order after hearing the petitioner's representative. As noticed earlier, respondent No.3 shall be obligated to deal with the question of limitation in addition to the merits of the matter.*
>
> *[7] In the event of any adverse order, the petitioner shall be at liberty to approach the appellate forum as well as any other superior forum, if need be."*

2. It is after that the impugned order has been passed whereby the amount mentioned in the show cause notice has been reduced from ₹2 crores to about ₹ 50 lacs.

3. The precise contention of learned counsel is that it is thereafter that the impugned order Annexure P4 has been passed. The primary argument is that the issue of limitation has not been dealt with. We find that in the order the authority has held that the period of 1 to 5 years as described under the Customs Act, 1962 would not apply to Rule 16 of Customs and Central Excise Duties Drawback Rules, 1995 and once that is so as per the authority no question of limitation arose in the present case. In our considered opinion, this argument goes too far. It is trite to say that even where no period of limitation is prescribed action has to be taken in some reasonable time and reference can be made in this regard to ***State of Punjab Versus Bhatinda District Co-op Milk P. Union Ltd.;*** ***2007 (217) ELT 325 (SC).***

4. The period mentioned in the present show cause notice (being 13 to 16 years) prior to the notice can by no stretch of imagination be taken to have been issued within any reasonable time.

5. In the circumstances, the present petition is allowed and the impugned order is set aside.

[AJAY TEWARI]
JUDGE

[AVNEESH JHINGAN]
JUDGE

FEBRUARY 03, 2020
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No