

Item no. 05

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Bivas Pattanayak

MAT 916 of 2022

with

IA No. CAN 1 of 2022

M/s. Nexage Innovations, a partnership firm & anr.

vs.

The Deputy Commissioner of Customs & ors.

Appearance:

For the Appellants : Mr. Vinay Shraff
Ms. Priya Sarah Paul

For the respondent : Mr. K. K. Maity
Nos. 1, 3 & 4 Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
Ms. Ekta Sinha

Heard on : 07.07.2022

Judgment on : 07.07.2022

T.S. Sivagnanam J.:

We have heard Mr. Vinay Shraff, learned counsel for the appellant and Mr. K. K. Maity, learned counsel for the respondent nos. 1, 3 and 4.

(2) This intra court appeal, at the instance of the writ petitioner is directed against the order dated 17.06.2022 passed in WPA 9877 of 2022.

(3) The appellant/writ petitioner is aggrieved on account of the learned writ court having declined to pass any interim order pending writ petition. The appellant had filed the writ petition with the following prayers:

a) to direct the respondents, in particular, the 2nd respondent for removal of “Risky Exporter” Tag from the Indian Customs, EDI System;

b) to issue a writ of mandamus by directing the authorities to issue a no objection letter;

c) to direct the respondents to grant the pending duty drawback under the provisions of the Customs Act, 1962 as well as the pending refund of Integrated Credit Goods and Service Tax (IGST);

d) for compensation for the delay in granting refund of duty drawback and,

e) for compensation for the delay in the refund of IGST.

(4) In our considered view, there was no scope for granting any interim order in the writ petition as if granted would tantamount to granting the main relief at an interlocutory stage which is impermissible under law. We are of the view that no useful purpose would be served in keeping the writ petition pending and therefore inclined to dispose of the

writ petition as well as the appeal itself to which the learned counsel for the parties have agreed to.

(5) Though the learned counsel for the appellant had elaborately set out the facts and circumstances of the case, all that is required to be seen is as to the reason as to why the appellant/writ petitioner has been branded as “Risky Exporter”. The reason can be culled out from the communication sent from the Office of the 3rd respondent dated 19.08.2021. This communication is in response to the writ petitioners’ e-mail dated 19.08.2021. It is stated that the verification pertaining to the writ petitioner has been completed and forwarded to the 2nd respondent for their information. The petitioner was informed that some of their suppliers were found in the list to be suspected suppliers, the ITC available on the basis of the invoices of these suppliers is under scrutiny and the jurisdictional commissioners are entrusted with the verification of these suppliers. The list of suppliers was also furnished in the said communication. Therefore, the writ petitioner was informed that alert issued by the 2nd respondent is related with the ITC availment from the suspected suppliers. The petitioner was therefore requested to reverse the credit availed from the non-existent suppliers at the earliest. The names of the suppliers their GSTIN and the tax pending details were furnished in the form of an annexure to the said communication. On receipt of the same, the petitioner through their authorized representative informed the Additional Commissioner in the Office of the 3rd respondent by letter

dated 28.09.2021 informing them that they have reversed the ITC credit of Rs. 1185781.26 alongwith 15% penalty on the same, that is, Rs. 177867.18 and the DRC-O3 for the transactions were annexed to the said letter. The petitioner also attached the cash bank challans for the payment of penalty for the consideration of the 3rd respondent Department. After having mentioned so, the petitioner requested to remove the “Risky Exporter” tag from the Indian Customs, EDI System so as to enable them to start their business again. The said request has not been acted upon and at that juncture, the writ petition has been filed.

(6) Learned counsel for the appellant has drawn our attention to various grounds raised in the writ petition as to the procedural infirmities committed at various stages of the matter, as to how there has been violation of principles of natural justice, the effect of the three circulars issued by the Department etc.

(7) However, in our considered view, we need not travel thus far to examine as to what relief the petitioner would be entitled to in the present writ petition.

(8) Learned counsel for the respondents would vehemently contend that the petitioner having reversed the ITC credit and also paid the penalty would tantamount to accepting the charge against them and, in any event, it is for the 2nd respondent authority to take action for the purpose of removing the “Risky Exporter” tag. Further, the learned counsel would submit that they have no instruction or information as to

whether any other information is available with the 2nd respondent or with any other investigating agency or that the petitioner has come to adverse notice for any other matter.

(9) In our considered view, we cannot proceed on the basis of assumptions and presumptions since as of now, the only allegation against the petitioner is that few of the suppliers are suspected suppliers. The 3rd respondent Department directed the petitioner to reverse the credit availed by them alleging that the suppliers are non-existing suppliers. This demand made by the Department has been complied with by the petitioner. Therefore, it will not augur well to continue the brand of the petitioner as a “Risky Exporter” in the absence of fresh material available on record. In any event, the tag which has been fastened to the EDI System pertaining to the petitioner as a “Risky Exporter” has been done without notice to the petitioner. Therefore, if there is any other material, it will be open to the respondents including the 2nd respondent to put the petitioner on notice and take appropriate action in accordance with law.

(10) The petitioner apart from seeking for removing the “Risky Exporter” tag also seeks for a positive direction to grant the pending duty drawback under the provisions of the Customs Act and also grant the refund of the IGST. At this juncture, no such positive direction can be issued to the authorities but the authorities are bound to take action in accordance with law. If, in the opinion of the authority, for some valid

reasons, there is doubt as to the entitlement, then the petitioner has to be put on notice and an opportunity has to be granted to the petitioner.

(11) Hence, in our considered view, the following directions will protect the interest of revenue and also give reprieve to the assessee.

(12) In the result, the appeal and the writ petition stand **disposed of** with the following orders.

(i) The competent authority of the 2nd respondent Department is directed to lift/remove the “Risky Exporter” tag affixed in the Indian Customs, EDI System concerning the petitioner within three weeks from the date of receipt of the server copy of this order.

(ii) The appropriate respondent/s shall process the duty drawback claim made by the petitioner as well as the refund claim of the IGST within three weeks from the date of receipt of the server copy of this order after issuing a notice to the petitioner, if in the opinion of the Department, there is any doubt as regards to the entitlement for duty drawback or refund of IGST.

There will be no order as to costs.

Consequently, the connected application stands disposed of.

(T. S. Sivagnanam, J.)

(Bivas Pattanayak, J.)