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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 10.10.2022

+ **W.P.(C) 1645/2019**

COMBITIC GLOBAL CAPLET PVT. LTD Petitioner

Through: Mr R.K. Varma and Mr D.K. Singh,
Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Shiva Lakshmi, CGSC with Mr
Ritwik Sneha and Ms Srishti Rawat,
Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. It is not disputed by learned counsel for the parties that the issue raised in the present writ petition is covered by the judgment of this Court dated 02.09.2022, rendered in W.P.(C) No.1644/2019, titled ***Combitic Global Caplet Pvt. Ltd. v. Union of India & Ors.***

2. According to learned counsel for the parties, the only difference that obtains in the instant matter when compared with the facts found in the above-mentioned judgment, concerns the location of the impugned provision. In the aforementioned judgement, the impugned provision stood incorporated in the Policy Circular No.9(RE-2013)/2009-14 dated 30.10.2013 [hereafter referred to as “the 2013 Circular”], while in the

present matter, the impugned provision is contained in paragraph no. 7.06(b) of the Foreign Trade Policy, 2015-2020 [in short “FTP 2015-2020”].

2.1. To be noted, paragraph no. 7.06(b) of the FTP 2015-2020, which is impugned in the instant petition, reads as follows:

“7.06 Conditions for refund of deemed export drawback

Supplies will be eligible for deemed export drawback as per para 7.03 (b) of FTP, as under:

xxx

xxx

xxx

(b) If CENVAT credit/rebate has been availed by the supplier of goods, on inputs/input services, then, no Drawback shall be admissible as per Column ‘B’ of All Industry Rate of Duty Drawback Schedule. However, in such cases, Basic Customs Duty paid can be claimed as Brand Rate of Duty Drawback based upon submission of documents evidencing actual payment of duties.”

2.2 We may note that in the interregnum, paragraph 7.06 of FTP 2015-2020 has been amended various times, with the latest amendment having been carried out via Notification No. 28/2015-2020, dated 31.10.2019. This amendment was given retrospective effect i.e., from 05.12.2017.

2.3 Paragraph 7.06 of the FTP 2015-2020, as it stands today, reads thus:

“7.06 Conditions for refund of deemed export drawback

Supplies will be eligible for deemed export drawback as per para 7.03 (b) of FTP, as under:

Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on ‘All Industry Rate’ of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on ‘Brand Rate Basis’ upon submission of documents evidencing actual payment of basic custom duties.”

2.4. It may also be noted that the petitioner has also sought consequential relief against paragraph no. 7.06(b) of the Handbook of Procedures 2015-2020 [in short “HBP 2015-2020”.]

2.5. The issue which is brought up in the instant case and in the aforementioned judgment, was whether the petitioner could claim refund of duty drawback on the customs component, as per Column ‘B’ of the All Industry Rate. According to the petitioner, this position only stood clarified with the amendment issued *via* notification dated 31.10.2019. Noticeably, the amendment was brought to the notice of the Court, by the petitioner, *via* its rejoinder. No sur-rejoinder has been filed by the respondents.

3. Concededly, the other aspects of the matter remain the same.

3.1. Therefore, the instant writ petition is disposed of, with the following directions:

(i) The petitioner would not be required to have a brand rate of duty drawback fixed, based on actual duty-paid documents for the return of basic customs duty. To that extent, paragraph no. 7.06(b) of the FTP 2015-2020, prior to the amendment, is read down. Consequentially, paragraph no. 7.06(b) of the HBP 2015-2020, prior to the amendment, is also read down.

(ii) The respondents are directed to accept and allow the claims of the petitioner, whereby duty drawback of the customs component on supplies made by the Domestic Tariff Area (DTA) unit to the petitioner in the category of ‘recipient of goods’ is made under Column ‘B’ of All Industry Rate, without insisting on actual duty-paid documents. The petitioner will, however, place on record, a suitable disclaimer, made by the DTA unit, that it has not claimed duty drawback on the customs component, concerning the

supplies in issue.

(iii) Since Mr R.K. Varma, who appears on behalf of the petitioner, says that damages, in the shape of interest are not claimed, no directions are passed, *qua* the same.

(iv) In sum, the reasoning provided in the above-mentioned judgment, shall apply *mutatis-mutandis* to the instant case, as well.

4. The writ petition is disposed of, in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 10, 2022

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