15.12.2023
Item No.05
RP/Aloke
Ct. No.1

MAT 1954 OF 2023
+
IA No.CAN 1 of 2023

Tega Industries Limited
Vs.
Assistant Commissioner of Customs (Port), Drawback Department

Mr. Vinay Kr. Shraff
Ms. Swarnwarshi Poddar
Ms. Priya Sarah Paul
Mrs. Sanchita Dey
.....for the Appellant

Mr. Kaushik Dey
Ms. Manashi Mukherjee
.....for the respondent

1. This intra-Court appeal is directed against the order dated 26th September, 2023 passed in WPA 21003 of 2023. In the said writ petition the appellant had challenged the show cause notice dated 10th February, 2023 issued by the Customs Authority, by which the Customs Authority directed the appellant to show cause as to why the drawback amount of Rs.23,53,44,870/- against 1576 Shipping Bills, the details of which were furnished in the annexure to the show cause notice issued to the noticee under Section 75A(2) of the Customs Act, 1962, should not be disallowed. The appellant was required to submit a reply to the show cause notice. Though the appellant had initially sought for extension of time, subsequently it had challenged the show cause

notice in the writ petition. The learned Single Bench dismissed the writ petition by permitting the appellant to submit its reply to the show cause notice and aggrieved by such order the appellant has filed the present appeal.

2. The shit-anchor of the submission of Mr. Shraff, learned advocate for the appellant is that the show cause notice alleges that drawback claims was not admissible for the period ranging between 01.01.2008 to 31.03.2014 and no reasonable person be called upon to give his explanation for transactions, which have been made in between 01.01.2008 to 31.03.2014. The case of the appellant is sought to be buttressed by placing reliance on the decision passed in the case of Famina Knit Fabs vs. Union of India reported in 2020 (371) E.L.T. 97 (P & H) and it is submitted that in the said decision the Hon'ble Division Bench held that five years period is a reasonable period of limitation and beyond which a show cause notice cannot be issued. There are other decisions also arising out of other enactments which have been referred to by the learned advocate for the appellant.

3. The learned advocate for the appellant further submits that the claim of drawback in the assessee's case was under the Central Excise Duties and Service Tax Drawback Rules, 2008 and action

cannot be initiated under the Central Excise Duties and Service Tax Drawback Rules, 2017. In our considered view the question as to whether a show cause notice could be issued at this distant time is not a pure question of law but a mixed question on facts and law, more particularly, when we examine the scheme of Drawback Rules, both of the year 1995 as well as 2017. In this regard, it is beneficial to refer to a decision in the case of Famina Knit Fabs (supra) wherein the Hon'ble Division Bench pointed out that "*Drawback is an export incentive in the form of cash award admissible under Duty Drawback Rules, 1996/2017 which an exporter becomes entitled to export of goods and realization of export proceeds (foreign currency). In the absence of export of goods or realization of export proceeds, drawback cannot be released and if released, the proper officer has power to recover the same from the exporter. Drawback is claimed in the shipping bill itself and no separate application seeking drawback is filed. Section 14 of the Act, 1962 talks of transaction value whereas Valuation Rules, 2007 prescribe method and manner to determine value in case proper officer finds that transaction value is not true and correct. Neither limitation period has been prescribed nor is there requirement of show cause notice for demand/recovery of duty drawback and its* *adjudication under Rule 16 of the Drawback Rules, 1995.*" The above interpretation of the relevant Drawback Rules clearly shows that there is neither any limitation period prescribed nor there is any requirement of any show cause notice for demand or recovery of duty Drawback and its adjudication under Section 16 of the Drawback Rules 1995.

4. One distinguishing fact in the case of Famina Knit Fabs (supra) is that the petitioner therein realized export proceeds within the stipulated period of time and the respondent therein released the drawback amount and no drawback claim of the petitioner was pending on the date of introduction of the Drawback Rules 2017. In the said case the Directorate of Revenue Intelligence took up the matter for investigation and show cause notice was issued in the year 2018. In the backdrop of this fact the Hon'ble division Bench considered and held that if contention of DRI is accepted, no assessment would conclude till an agency investigate and opines in one or another manner. Therefore, the conclusion that the period of five years for all purposes is a reasonable period. Therefore, we are of the view that the factual matrix in the said case is distinguishable and cannot be applied to the case on hand. Furthermore, in the instant case there appears to be no investigation by DRI and a proper officer of

Customs has issued the show cause notice. Apart from that we find in the annexure to the show cause notice the details of the shipping bills viz. The date of the shipping bills, date of the export order and drawback claim have also been mentioned there. Therefore, we are of the view that the appellant should respond to the show cause notice by submitting a reply and annexing all documents in support of its contention. Thus, we find that no grounds have been made out to differ with the ultimate conclusion arrived at by the Single Bench by not entertaining the writ petition against the show cause notice.

5. For the above reasons, the appeal and the connected application are dismissed. The appellant is directed to submit its reply to the show cause notice within sixty days from the date of receipt of the server copy of this order along with supportive documents. Thereafter the Adjudicating Authority shall afford an opportunity of personal hearing to the authorized representative of the appellant and adjudicate the show cause notice on merit and in accordance with law.

6. We make it clear that we have not gone into the merits of the matter and it is well open to the appellant to raise all contentions, both on facts and

law, which shall be adjudicated by the Adjudicating Authority.

7.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)