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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.2557 & 2560 of 2023 and
W.M.P.Nos.2651 & 2656 of 2023

M/s.Flextronics India Pvt. Ltd.,
Plot No.3, Phase - II,
DTI Unit, SIPCOT Industrial Park,
Sandavellur C Village,
Sriperumbudur Taluk,
Kancheepuram District,
Tamilnadu - 602 106. ... Petitioner in both W.Ps.

vs.

1.Joint Secretary / Director (Drawback),
Ministry of Finance,
Department of Revenue,
Government of India,
Central Board of Indirect Taxes and Customs,
4th Floor, Jeevan Deep Buildings,
Parliament Street, New Delhi.

2.Principal Chief Commissioner of Customs
(Chennai Zone), Custom House,
60, Rajaji Salai, Chennai - 600 001. ... Respondents 1 and 2 in both W.Ps

3.Principal Commissioner of Customs,
Chennai IV Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

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4.Deputy Commissioner of Customs (Drawback),
O/o. Principal Commissioner of Customs,
Chennai IV Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001. ... Respondents 3 and 4 in W.P.No.2557 of 2023

3.Principal Commissioner of Customs,
Chennai VII Commissionerate,
New Custom House, Air Cargo Complex,
No.27, GST Road, Meenambakkam,
Chennai - 600 027.

4.Deputy Commissioner of Customs (Drawback),
O/o. Principal Commissioner of Customs,
Chennai VII Commissionerate,
New Custom House, Air Cargo Complex,
No.27, GST Road, Meenambakkam,
Chennai - 600 027. ... Respondents 3 and 4 in W.P.No.2560 of 2023

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in and connected with F.No.609(A)/4/2020-DBK/989 dated 24.11.2022, quash the same and direct the respondents herein, more particularly, the 4th respondent herein, to disburse drawback to the tune of Rs.63,51,103/- and Rs.1,78,420/-, respectively, with interest at appropriate rate.

For Petitioner in both W.Ps. : Mr.B.Satish Sundar

For Respondents in both W.Ps. : Mr.Rajnish Pathiyil

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Standing Counsel

COMMON ORDER

By consent of both the parties, these writ petitions have been taken up for final disposal at the admission stage itself.

2. Mr.Rajnish Pathiyil, learned Standing Counsel accepts notice on behalf of the respondents.

3.These writ petitions have been filed challenging the impugned orders passed by the first respondent under Rule 7A of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, rejecting the petitioner's request for claiming duty drawback as per the provisions of Section 74 of the Customs Act, 1962 on the ground that the petitioner has not satisfactorily established the reasons for delay in filing the duty drawback claim.

4. Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mr.Rajnish Pathiyil, learned Standing Counsel for the respondents.

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5. According to the petitioner, they had imported accessories meant for manufacture of mobile phones from China. After utilisation of the imported accessories in the manufacture of mobile phones, the left over accessories were re-exported and the petitioner is entitled for duty drawback as per the provisions of Section 74 of the Customs Act, 1962. The petitioner had re-exported the accessories within the period of two years as provided under Section 74 of the Customs Act, 1962, which is not in dispute. The accessories re-exported by the petitioner has also been identified by the 2nd and 3rd respondents. However, as per Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the petitioner will have to make a drawback claim within a period of three months from the date on which an order permitting clearance and loading of goods for exportation under Section 51 is made by proper officer of Customs. As per the proviso to the said Rule, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he is satisfied that the exporter has given sufficient cause to file his claim, allow the exporter to file his claim within a further period of three months. The petitioner claims that due to unavoidable circumstances they could not file the duty drawback claim within the

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stipulated period as prescribed under Rule 5 of the aforementioned Rule. The petitioner had filed duty drawback claim only on 27.12.2019. Since the petitioner could not file the duty drawback claim within the stipulated period as fixed under Rule 5 of the aforesaid Rule, he had sought for relaxation as per Rule 7A of the said Rule on 18.06.2020 before the 1st respondent (Central Government). Rule 7A of the aforementioned Rule reads as follows:

> ***"7A. Power to relax:***
>
> *If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods."*

6. Under the impugned orders, the relaxation petition filed by the petitioner under Rule 7A of the aforementioned Rule has been rejected by the first respondent on the ground that the petitioner has not satisfactorily established the reasons for delay in filing of duty drawback claim in respect

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of the shipping bills and therefore they are not entitled for duty drawback as per the provisions of Section 74 of the Customs Act, 1962. The petitioner has challenged the impugned orders on the following grounds:

(a) The petitioner has satisfied all the statutory requirements for availing duty drawback as per the provisions of Section 74 of the Customs Act, 1962.

(b) Only due to unavoidable circumstances, which has been disclosed in the written submissions made by the petitioner before the first respondent, the petitioner could not file the duty drawback claim within the stipulated time. In the written submissions the petitioner has filed an affidavit of Mr.Arun, Director of Finance, which states that due to the fact that the petitioner's premises was shifted, there was misplacement of files and due to resignation of the concerned personnel handling the documentation of preparation of records there was a delay. The medical record of the employee, who has resigned and proof for shifting of the petitioner's premises were also submitted to the first respondent.

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According to the petitioner, despite establishing before the first respondent the unavoidable circumstances, which led to the petitioner not filing the duty drawback claim within the prescribed time, by total non application of mind to the same, the impugned orders have been passed.

(c) The petitioner has also relied upon various decisions before the first respondent, which are mentioned hereunder, in support of their case that they are entitled for relaxation as per the rule 7A of the 1995 rules:

a. 2003 (156) ELT 841 (Cal) - para 21,23,24, 27 and 33

b. 2010 (255) ELT 226 (Kar) as affirmed by Supreme Court in 2010 (255) ELT A46 (SC)

c. 2013 (289) ELT 151 (Del) - para 3,4,6,7 and 8

d. 2015 (325) ELT 519 (Kar) - para 9 and 10

e. 2018 (360) ELT 449 (Mad) - para 6,8,9 and 11

f. 2018 (362) ELT 87 (Mad) - para 18 to 26

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7. However, as seen from the impugned orders, the contentions of the petitioner for not preferring the duty drawback claim within the prescribed time has not been considered. But by a cryptic and non-speaking order, the first respondent has rejected the petitioner’s request for relaxation in respect of the delay in filing the duty drawback claim by stating as follows:

> *“After considering the matter in its entirety, it is concluded that the applicant has not satisfactorily established that the reasons for delay in filing of drawback claim in respect of the above mentioned shipping bills be termed as those beyond the control of the applicant as required under Rule 7A of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 for claiming drawback under Section 74 of the Customs Act, 1962. Therefore, the said request of M/s.Flextronics Technologies (India) Private Limited (petitioner herein) is not considered favourably”.*

8. Learned Standing Counsel appearing for the respondents referring to the documents filed along with these writ petitions would however submit that the petitioner has not satisfactorily established before the first

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respondent the unavoidable reasons which led him to file the duty drawback claim belatedly. Learned Standing Counsel for the respondents cannot rely upon the documents filed along with these writ petitions, that too, when the first respondent has not considered the same on merits in the impugned orders, which is a cryptic and a non-speaking order. Any improvement of the impugned order cannot be made by the learned Standing Counsel for the respondents. Therefore, the contentions of the learned Standing Counsel for the respondents before this Court is rejected.

9.It is also not in dispute that the petitioner has satisfied all the statutory requirements for claiming duty drawback as per the provisions under Section 74 of the Customs Act, 1962. When the petitioner has given detailed reasons as to why they were unable to file the duty drawback claim within the prescribed time, the first respondent ought to have considered the said reasons objectively, but as seen from the impugned orders, no reasons have been given for rejecting the petitioner's reasons for non filing of the duty drawback claim on time. Being a cryptic and a non-speaking order, the impugned orders will have to be necessarily quashed and the matter has to

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be remanded back to the first respondent for fresh consideration on merits and in accordance with law.

10. Accordingly, the impugned orders dated 24.11.2022 are quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law. The first respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this order after giving due consideration to the contentions of the petitioner in his written submissions dated 03.11.2022 and after affording one personal hearing to the petitioner.

11. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
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