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

% *Date of Decision: 06.02.2023*

+ W.P.(C) 9082/2022
COLOUR COTTEX PVT LTD Petitioner

Through: Mr. Mukul Singla, Adv.
versus

COMMISSIONER OF CUSTOMS (EXPORTS),
NEW DELHI AND ANR. Respondents

Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur & Mr. Jatin Gaur,
Advts.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Issue Writ of Mandamus directing the Respondent no. 1 to adjust pending drawback claims amounting to Rs. 26,65,334/- towards the demand confirmed vide Order-in-Original dated 15.09.2021;

b) Issue writ of mandamus directing the Respondent No.2 to consider the appeal of the Petitioner on merits without insisting pre-deposit required under Section 129E of the Customs Act, 1962;

c) In alternative: Issue writ of mandamus directing the Respondent No. 1 to refund the Duty Drawback amounting to Rs. 26, 65, 334/- along with interest.”

2. The petitioner states that it is engaged in exporting readymade garments. It had exported the said goods under 211 Shipping Bills during the period 01.01.2014 to April, 2015. In respect of the said exports, it claimed duty drawback of approximately ₹10.16 crores. The petitioner claims that on 28.07.2015, it uploaded the details of nine Shipping Bills on the DGFT portal. Although the duty drawback in respect of the exports under the said Bills was sanctioned, the same has not been disbursed.

3. It is stated that the officials of respondent no. 1 conducted search operations on the premises of the petitioner on the allegation that the petitioner had wrongfully claimed benefit of ‘Focus Market Scheme.’ After the investigations were conducted, respondent no.1 issued a show cause noticed dated 27.09.2017 seeking the petitioner’s response in respect of the allegations stated therein. The petitioner responded to the same by a letter dated 18.08.2021 and denied all allegations.

4. Thereafter on 15.09.2021, the Commissioner passed an order, *inter alia*, dropping proceedings for confiscation of goods and recovery of duty drawback of ₹10,16,78,637/-. However, the Commissioner directed recovery of ineligible Focus Market Scrips of ₹1,58,44,432/- and further imposed a penalty of ₹50,00,000/- under Section 114(iii) and 114AA of the Customs Act, 1962.

5. On 25.09.2021, the petitioner requested for release of the duty drawback, which was due in respect of the aforementioned Shipping

Bills (nine in number), the details of which were uploaded on the DGFT Portal, on 28.07.2015. Concededly the proceedings for recovery of duty drawback in respect of these Shipping Bills had been dropped in terms of the aforementioned order dated 15.09.2021.

6. The petitioner states that on 09.11.2021, it filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) against the order dated 15.09.2021. However, the said appeal has not been entertained as yet for want of pre-deposit of the requisite amount. The petitioner requested that the amount of duty drawback be adjusted against its liability to make a pre-deposit in terms of Section 129E of the Customs Act, 1962 (hereafter 'the Customs Act'). The petitioner claims that it is required to make a pre-deposit of a sum of ₹11.88 lacs to maintain its appeal against the order dated 15.09.2021.

7. The respondent has filed the counter affidavit. The counter affidavit does not reveal any ground to withhold the duty drawback in respect of the nine Shipping Bills except that foreign exchange remittance in respect of four Shipping Bills has not been received.

8. Mr. Singh, learned counsel appearing for the respondents, states that in respect of the remaining four shipping bills, remittances have not been received. Thus, duty drawback in respect of those Shipping Bills cannot be released at this stage. He also submits, that there is no provision under the Customs Act for adjustment of any amount due to an exporter against the obligation to make a pre-deposit for the purpose of pursuing an appeal under Section 129E of the Customs Act.

9. We find merit in Mr. Singh's contentions that the relief directing adjustment of duty drawback against the petitioner's obligation to make

a pre-deposit under Section 129E of the Customs Act is not permissible. The nature of a claim for duty drawback is materially different from the nature of the deposit required to avail a right of the appeal as provided under the Customs Act.

10. Having stated the above, this Court is of the view that the petitioner's grievance may be allayed if directions are issued to the respondent to forthwith release the duty drawback in respect of the five Shipping Bills (out of nine shipping bills that were uploaded by the petitioner on 28.07.2015). The petitioner would, thereafter, be at liberty to utilise the funds received for complying with its obligation to make a pre-deposit to maintain an appeal before the CESTAT.

11. This Court also considers it apposite to direct CESTAT not to reject the petitioner's appeal (diary no. 52123/2021) for want of pre-deposit for a period of four weeks from today.

12. Insofar as the petitioner's claim for other remaining duty drawback is concerned (the duty drawback in respect of other Shipping Bills), the petitioner is at liberty to avail of its alternate remedy for release of the said amount.

13. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 6, 2023
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