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

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Date of Decision: 11.04.2023

+ **W.P.(C) 6207/2020**

RANGOLI INTERNATIONAL PVT. LTD. Petitioner

Through: Mr A. K. Prasad and Ms Surabhi
Sinha, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Ravi Prakash, CGSC with
Mr Aman Rewaria, Advocate
for R-1.

Mr Harpreet Singh, Senior
Standing Counsel with Ms
Suhani Mathur and Mr Jatin
Kumar Gaur, Advocates.

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*, impugning an order dated 01.01.2020 (hereafter '**the impugned order**') passed by the Additional Secretary to the Government of India, Ministry of Finance (the Revisional Authority), whereby the petitioner's revision application [case bearing F. No. 375/20/DBK/2018-RA captioned *M/s Rangoli International Pvt. Ltd. v. Commissioner of Customs (Export)*,

Air Cargo Complex, New Custom House, Delhi] was rejected.

2. The petitioner is, essentially, aggrieved by the demand for refund of the duty drawback amounting to ₹1,74,11,800/- availed by the petitioner for exports during the period 09.05.2012 to 01.07.2013 along with interest. The petitioner claims that it had exported goods to Dubai during the aforementioned period under cover of 55 Shipping Bills and had availed of duty drawback in respect of the said exports.

3. Admittedly, the petitioner did not receive foreign exchange remittance against some of the said bills. In this context, the Customs Department issued show cause cum demand notices (four in number) dated 20.02.2015 and 21.02.2015, calling upon the petitioner to show cause why the amount of duty drawback aggregating ₹1,74,11,800/- availed by it not be recovered in terms of proviso to Sub-section (1) and Clause (ab) of Sub-section 2 of Section 75 of the Customs Act, 1962 (hereafter '**the Customs Act**') read with Rule 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (hereafter '**the Drawback Rules**'). In addition, the petitioner was also called upon to show cause why penalty not be imposed under Section 114 of the Customs Act.

4. It appears that the petitioner did not respond to the said show cause notices. The said show cause notices were adjudicated and the Adjudicating Authority passed an order dated 11.11.2016/23.11.2016 confirming the demand of ₹1,41,43,818/- along with interest on account of the duty drawback availed in respect of export shipments against

which remittance in foreign exchange was not received. The Adjudicating Authority also imposed penalty of ₹20,00,000/- under Section 114 of the Customs Act. A plain reading of the said order dated 11.11.2016/23.11.2016 indicates that the petitioner had not responded to the show cause notices. It had instead sent a letter contending that it had not received the show cause notice and further asserting that the export proceeds had been received in respect of the number of shipping bills. Apparently, the petitioner claimed that it had not received the export proceeds in some cases on account of disputes with the foreign buyers. In some cases, the disputes had been settled after negotiations and the petitioner expected that it would receive the proceeds shortly. The petitioner had also furnished statement of bank realisations in some cases. It appears that the petitioner had sought time to submit Bank Remittance Certificates (BRCs) but despite the opportunity, it was unable to submit BRCs in respect of most of the Shipping Bills in question.

5. Aggrieved by the order-in-original dated 11.11.2016/23.11.2016, the petitioner preferred an appeal before the Commissioner of Customs (Appeals). The said appeal was rejected by an order-in-appeal dated 05.12.2017. The petitioner filed a revision application against the said order before the Revisional Authority, which was dismissed by the *ex parte* impugned order.

6. The learned counsel appearing for the petitioner has assailed the impugned order on three grounds. First, that the impugned order was passed in violation of the principles of natural justice as the petitioner

was not heard. Second, that the petitioner had written off the unrealised bills in terms of the RBI Circular dated 12.03.2013 [RBI AP (DIR Series) Circular No.88]. He submitted that the petitioner was entitled to write off unrealised export bills up to a maximum of 10% of the total export proceeds realised during the previous calendar year and the petitioner had barely written off 5.2% of the unrealised bills. He contended that there was no requirement to refund the duty drawback in terms of the RBI Circular as duty drawback is not an export incentive. Third, he contended that the petitioner was not required to refund the duty drawback in terms of Rule 16A(5) of the Drawback Rules.

7. We find no merit in the contention that the impugned order has been passed in violation of the principles of natural justice. The petitioner was afforded adequate opportunity to be heard. It is not disputed that the hearings were scheduled on 09.12.2019 and 30.12.2019. However, the appellant admittedly did not appear on either of the two hearings.

8. Insofar as the petitioner's challenge to the recovery of duty drawback is concerned, we find that the ground now sought to be urged was not urged before the Adjudicating Authority, the Appellate Authority, or the Revisional Authority. The order-in-appeal indicates that the petitioner had challenged the order-in-original dated 11.11.2016/23.11.2016 on three grounds. First, that the same was passed without affording further time to prepare a reply. Second, that the petitioner was entitled to write off unrealised export bills in terms of the RBI Circular dated 12.03.2013; and third, that the penalty cannot

be imposed as the export proceeds were not realised for no fault on the part of the petitioner. It was not the petitioner's case that drawback is not an export incentive or that it is not refundable under Rule 16A(5) of the Drawback Rules. The Revision Application filed by the petitioner indicates that the principal ground urged by the petitioner was that in terms of Rule 16A(5) of the Drawback Rules, no recovery of drawback is to be effected. The petitioner also claimed that on a conjoint reading of Rule 16A(5) of the Drawback Rules and the RBI Circular dated 12.03.2013, the petitioner was entitled to write off unrealised portion of the drawback.

9. Although it is apparent that the petitioner had not raised the issues which are now sought to be raised before this Court, we consider it apposite to examine the same.

10. The RBI Circular dated 12.03.2013 relied upon by the petitioner is of no relevance to the controversy. In terms of the said Circular, Reserve Bank of India (RBI) liberalized the procedure for writing off the amounts receivable by exporters in respect of the export shipments. In terms of the said procedure, exporters were provided greater flexibility to write off the amounts due from overseas entities and the authorised dealers were also given wider latitude to accept requests from exporters to write off unrealised export invoices subject to the conditions as specified in the said Circular. It is material to note that the said Circular was issued under Section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (hereafter '**FEMA**') and did not affect the obligations under any other enactment. Any amount written

off in terms of the Circular would not be considered as non-compliant with the provisions of FEMA but the same did not affect the exporter's obligations under other enactments. The contention that write off of unrealised bills in terms of the RBI Circular dated 12.03.2013 also absolved the petitioner from refunding the duty drawback availed by the petitioner, is without merit.

11. It is relevant to refer to Section 75 of the Customs Act, which contains provisions regarding drawback. The second proviso to Section 75 is relevant and reads as under:

“PROVIDED FURTHER that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), such drawback shall except under such circumstances or such conditions as the Central Government may, by rule, specify, be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.”

12. It is apparent from the above that by virtue of the second proviso, the petitioner was liable to pay the amount of duty drawback availed by it in respect of exports in respect of which the consideration had not been received in India within the time as permitted under FEMA. It is, plainly, erroneous to contend that the second proviso to Section 75 of the Customs Act is inapplicable in cases where write off is permissible under FEMA. Insofar as the contention that duty drawback is not

recoverable in terms of Rule 16A(5) of the Drawback Rules is concerned, it would be necessary to refer to the said Rule. Rule 16A(5) of the Drawback Rules is set out below:

“16A(5) Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.”

13. On plain reading of sub-rule (5) of Rule 16A of the Drawback Rules, it is apparent that duty drawback paid to an exporter is not required to be recovered if three conditions are satisfied. First, that non-realisation of the sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC) under an insurance cover; second, that the RBI writes off the requirement of realisation of sale proceeds on merits; and third, that the exporter produces certificates from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

14. In the present case, the statement of facts, as stated in the Revision Application filed by the petitioner, does not set out the factual details for claiming the benefit of Rule 16A(5) of the Drawback Rules. It is not disputed that the petitioner has not received compensation from

the ECGC. Thus, Rule 16A(5) of the Drawback Rules is not applicable.

15. We find no ground to interfere with the impugned order. The petition is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 11, 2023
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