IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11874 of 2022

M/s.Virgo Polymers (India) Limited,
Represented by its Director
Mr.Vivek Ramsiaria ... Petitioner

Vs.

1.The Principal Commissioner RA and
Ex-Officio,
Additional Secretary to the Government
of India,
8th Floor, World Trade Centre,
Cuffe Parade, Mumbai – 400 005.

2.The Assistant Commissioner of Customs
(Drawback-SEA),
No.60, Rajaji Salai,
Custom House, Chennai – 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus,

1. to call for the records of Order No.303/2021-CUS(SZ)/ASRA/MUMBAI dated 01.12.2021 upon the Revision Application filed in F.No.373/70/DBK/15-RA/7037 dated 03.12.2021 passed by the Principal Commissioner RA and Ex-Officio Additional Secretary to the

Government of India and quash the same.

2. Direct the Assistant Commissioner of Customs (Drawback-SEA) to pay duty drawback rejected through his letter F.No.S.Misc.160/2010-DBK dated 07.12.2012 with interest.

For Petitioner : Mr.R.Swarnavel

For Respondents : Mr.S.R.Sundar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the Impugned Order bearing F.No.373/70/DBK/15-RA/7037 dated 03.12.2021 passed by the 1st respondent as a Revisional Authority under Section 129DD of the Customs Act, 1962.

2. By the Impugned Order dated 03.12.2021, the 1st respondent has dismissed the Revision Application filed by the petitioner against Order-in-Appeal C.Cus.II.No.1 of 2015 dated 07.01.2015.

3. By the aforesaid Order dated 07.01.2015, the Commissioner of Customs (Appeals-III), the 2nd respondent herein had rejected the petitioner's appeal against the Order dated 07.12.2012 bearing F.No.S.Misc.160/2010-

DBK.

4. The petitioner had procured / obtained Duty Free Import Authorization under Chapter-4 of the Foreign Trade Policy (2004-2009) with effect from 01.04.2007 read with the relevant Handbook of Procedures. The petitioner had discharged the export obligation in respect of the exports made by the petitioner before procuring the aforesaid Duty Free Import Authorization.

5. Since the petitioner had discharged the export obligation, the petitioner had transferred the aforesaid Duty Free Import Authorization to M/s.Damodar Tradelinks Private Limited and M/s.Kamadhenu Polymers Private Limited (the importers / transferees).

6. It is the case of the petitioner that in terms of Paragraph 4.4.6 of the Foreign Trade Policy (2004-2009) with effect from 01.04.2007, the petitioner was entitled to drawback of the additional customs duty paid by the aforesaid importers / transferees at the time of import of goods under the transferred Duty Free Import Authorization licenses.

7. It is submitted that under these circumstances, the petitioner made a claim for refund in the form of duty drawback in terms of Paragraph 4.4.6 of the Foreign Trade Policy.

8. The 2nd respondent as the Original Authority herein vide Order dated 07.12.2012 bearing F.No.S.Misc.160/2010-DBK rejected the duty drawback for the additional customs duty paid by the petitioner on import of Polypropylene under the transferred Duty Free Import Authorization and held that the claim does not merit consideration as it neither falls under Section 74 nor under Section 75 of the Customs Act, 1962.

9. That apart, the 2nd respondent has also observed that the copy of the Duty Free Import Authorization licenses furnished by the petitioner do not state anything about the reimbursement of the additional customs duty paid by the petitioner and therefore once the licenses were transferred to the another importer / transferee, the resultant benefits of the licenses will accrue only to the importer / transferee and not to the exporter / transferor.

10. The said decision of the 2nd respondent dated 07.12.2012 bearing F.No.S.Misc.160/2010-DBK was affirmed by the Commissioner of Customs (Appeals-III) in his Order dated 07.01.2015 in Order-in-Appeal C.Cus.II.No.1 of 2015 with the following observations:-

> "I have carefully gone through the facts of the case. The appellants obtained DFIA licence. On fulfilling the export obligation the licenses were transferred to M/s.Damodar Tradelinks Private Limited and M/s. Kamadhenu Polymers Private Limited in terms of Para 4.4.6 of the Foreign Trade Policy on the condition that Additional Duty of Customs will have to be paid by the Importers. Para 4.4.6 of the Foreign Trade Policy has laid down that the exporter (appellant) is eligible for the CVD paid by the importers. The appellants have filed claim of drawback for the CVD paid by the importers (transferees).
>
> Chapter X of the Customs Act, 1962 deals with drawback. There are 3 Sections viz. Section 74, Section 75 and Section 76 under that Chapter. Drawback under Section 74 is allowed on reexport of the duty paid goods. Section 75 allows drawback on imported materials used in the manufacture of goods which are exported. Section 76 speaks about the prohibition and regulation of drawback. For drawback claim whether it be under Section 74 or 75 there should be a shipping bill. Whereas it is seen that the appellants are claiming drawback not on the exported goods but on the CVD paid by the transferee at the time of import. They have not filed any shipping bill under claim of drawback. In the first place, there is no shipping bill at all. The appellants claim for drawback does not fall under any of the provisions in the Customs Act, 1962 governing drawback. Therefore, the provisions of Para 4.4.6 of the Foreign Trade Policy cannot be implemented in the absence of suitable

> provisions in the Customs Act, 1962. Therefore, their claim cannot be considered. It is seen that the Assistant Commissioner (Drawback) has not rejected their claim of drawback. He has only returned the claim suggesting that the appellant may approach the DGFT authorities and seek a clarification in this regard. The case law and the Circular cited by the appellants do not mention about the sanction of drawback.
>
> In such a circumstances, the non-sanction of the appellants claim of drawback is proper and correct. Appeal rejected."

11. The above decision of the Commissioner of Customs (Appeals-III) has been affirmed by the 1st respondent vide Impugned Order dated 01.12.2021.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the affidavit and the documents filed in support of the present Writ Petition. I have also considered the Counter Affidavit filed by the respondents.

13. Paragraph 4.4.6 of the Foreign Trade Policy reads as under:-

> 4.4.6. **Transferability**:
>
> (1) Once export obligation has been fulfilled,

request for transferability of authorisation or inputs imported against it may be made before concerned RA. Once, transferability is endorsed, authorisation holder may transfer DFIA or duty free inputs, except fuel and any other item(s) notified by DGFT. However, for fuel, import entitlement may be transferred only to companies which have been granted authorisation to market fuel by Ministry of Petroleum and Natural Gas.

(2) Once transferability is endorsed, imports against authorisation or transfer of imported inputs shall be subject to payment of applicable additional customs duty / excise duty. While endorsing transferability, authorisation would bear a note as to liability of such additional customs duty / excise duty. Such additional customs duty / excise duty would be reimbursed to exporter as drawback. In case of local sales by excisable unit, CENVAT credit would equal excise duty already paid.

(3) Wherever SIONs prescribe actual user condition and in case of Acetic Anhydride, Ephedrine and Pseudo Ephedrine, DFIA shall be issued with actual user condition for these inputs and no transferability shall be allowed for these inputs even after fulfillment of export obligation."

14. It is the case of the petitioner that even if the Duty Free Import Authorization license is transferred, the petitioner would be entitled to avail the benefit of drawback in terms of Sub-Paragraph 2 to Paragraph 4.4.6 of the Foreign Trade Policy.

15. The expression “such additional customs duty / excise duty would be reimbursed to the exporter as drawback” in Sub-Paragraph 2 to Paragraph 4.4.6 of the Foreign Trade Policy would refer to an actual user of the Duty Free Import Authorization.

16. In case the petitioner had utilized the same for discharging the additional duty of customs and exported the goods manufactured out of the imported goods, the petitioner would have been entitled to export incentives in the form of duty drawback under Section 74 and Section 75 of the Customs Act, 1962.

17. Since the petitioner has transferred the Duty Free Import Authorization to its customers namely M/s.Damodar Tradelinks Private Limited and M/s.Kamadhenu Polymers Private Limited (the importers / transferees), it is only those importers / transferees who can claim the duty drawback after the exports were made from the imported goods against which the Duty Free Import Authorization obtained by the petitioner and transferred to the importers / transferees. As such, the petitioner is not entitled to claim duty drawback

under Section 74 and Section 75 of the Customs Act, 1962 on a eschewed reading of Sub-Paragraph 2 to Paragraph 4.4.6 of the Foreign Trade Policy.

18. In the result, this Writ Petition is liable to be dismissed. It is accordingly dismissed. No costs.

20.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

arb

To

1.The Principal Commissioner RA and
Ex-Officio,
Additional Secretary to the Government
of India,
8th Floor, World Trade Centre,
Cuffe Parade, Mumbai – 400 005.

2.The Assistant Commissioner of Customs
(Drawback-SEA),
No.60, Rajaji Salai,
Custom House, Chennai – 600 001.

C.SARAVANAN, J.

arb

W.P.No.11874 of 2022

20.11.2024