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

\+ CUSAA 50/2017 & CM APPL. 34340/2017 (Stay)

COMMISSIONER OF CUSTOMS .....Appellant

Through: Mr. Rajesh Gogna, CGSC with Ms. Priya Singh, Adv.

versus

M/S. FANCY IMAGES .....Respondent

Through: Mr. Tarun Gulati, Sr. Adv. with Mr. Tarun Chawla, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **10.09.2024**

1. We take note of the additional material which has been placed on the record by the respondent-assessee and which impugns an order *inter partes* dated 10 September 2021 passed by the Additional Secretary under Section 129DD of the **Customs Act, 1962**[1].

2. While dealing with the issue of whether drawback at an All Industry rate is admissible in respect of goods that may be exported by a 100% **Export-Oriented Unit**[2], and which are manufactured out of duty-paid raw materials, the Revisional Authority has observed as follows:-

> "**6.3** It is observed that the Commissioner (Appeals) has heavily relied upon the judgment of Tribunal in the Respondent's own earlier case to decide the present case in favour of the Respondent herein. The Tribunal's judgment is in turn based on the judgment of Hon'ble Karnataka High Court in Karle International, on the other hand, the department has contended that the Karle International case is in respect of the DTA exporter getting the goods manufactured by EOU on job work basis wherein the Hon'ble

[1] Act
[2] EOU

Karnataka High Court held that the DTA exporter was entitled to Duty Drawback even if such goods were directly exported from the premises of such EOU. Hence, the ratio of Karle International is not applicable in the present case. The Government observes that the ratio decidendi of the judgment in Karle International is contained in para 14 thereof wherein it has been held that *"Under Section 75, to be eligible for Duty Drawback, all that the exporter has to satisfy is that the goods are manufactured processed or on which any operation has been carried out in India. It is immaterial where the said manufacturing or processing has taken place. It may in his unit or it may be in EOU Unit. Guiding principle is, it should have been manufactured or processed in India and exported."* Further, in Karle International also the main ground to deny the claim was based on notification no. 67/98-Cus (NT) i.e. the predecessor notification of the notifications involved herein. The Hon'ble High Court, however, repelled this argument and held that the rights conferred in the statute, *i.e.,* under Section 75 of the Customs Act, 1962 cannot be taken away by issuing circulars. The revenue challenged this order before the Apex Court *[Commissioner v. Karle International* - 2015 (323) ELT A.74 (S.C.)], which was rejected as follows:-

> *"Admittedly, the decision of the Madras High Court in the case of the respondent-assessee itself, on the same issue has not been challenged by the Revenue. In that view of the matter, we decline to entertain these Special Leave Petitions which are dismissed accordingly."*

The review petitions were also dismissed by the Apex Court [2017 (348) ELT A27 (SC)].

6.4 As pointed out by the Hon'ble Supreme Court, while rejecting the SLPs in Karle International, the Hon'ble Madras High Court had in an earlier case of the same assessee taken an identical view, which was not even challenged by the Revenue. In this case reported as Commissioner of Customs, Tuticorin vs. LT Karle & Co. {2007 (207) ELT 358 (Mad.)}, the Hon'ble Madras High Court had held that a drawback claim on duties suffered on inputs cannot be denied on the ground that goods were manufactured by 100% EOU.

6.5 The Government further observes that in the case of CBEC vs. KG Denim Ltd. (supra), the Hon'ble Madras High Court has followed the judgments in Karle International (supra) and the LT Karle & Co. (supra) and held that the right vested by statutory provisions cannot be taken away by Circulars issued from time to time."

3. The authority has essentially taken note of the finality which stood accorded to the decisions handed down by the Karnataka and

Madras High Courts and in which cases even the review petitions as preferred before the Supreme Court had come to be dismissed.

4. In light of the stand taken by the authority of the Union itself in those matters, we find no justification to entertain the appeal. It shall, consequently, stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 10, 2024/kk