IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.16881 of 2023
and
W.M.P. Nos.16117 and 20465 of 2023

Navin Kumar Todi
Managing Director,
M/s.Lux Industries Limited,
473 /181, Avinashilingapalayam,
Palangarai Village, Avinashi,
Tirupur-641 654.

..Petitioner(s)

Vs

1. The Additional Secretary
(Revision Application Unit),
Government of India, Ministry of Finance,
Department of Revenue, Room No.610,
6th Floor, B Wing, Hudco Vishala Building,
14, Bikaju Cama Place, New Delhi-110 166.

2. The Joint Commissioner of Customs,
(Preventive) No.1, Williams Road, Cantonment,
Thiruchirapalli.

3. The Additional Commissioner of Customs
Central Taxes and GST, 6/7 A.T.D. Race
Course Road, Coimbatore 18.

4. The Commissioner of GST and Central Excise
(Appeals), 6/7 A.T.D. Race Course Road,
Coimbatore 18.

5. The Commissioner of GST
Service Tax and Central Excise (Appeals) No.1,
Williams Road, Cantonment, Thiruchirapalli.

6. The Commissioner of Customs (Preventive)
No.1, Williams Road, Cantonment,
Thiruchirapalli.

..Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the 1st respondent herein in the proceedings in the impugned order No.104-105/ 23-Cus dated 20.03.2023 quash the same passed herein and to issue a writ , order or direction to 6th Respondent herein to pass necessary orders extending the benefit of higher rate of duty Drawback @ 7.5 percent/ 7.1 percent.

For Petitioner(s): Ms.Sangeetha
Buvan Chander V.
for Mr.A.P.Ravi

For Respondent(s): Mr.T.Ramesh Kutty
Senior Panel Counsel (for R4 & R5)

Mrs.Revathy Manivannan (for R1, R2, R3 & R6)

ORDER

The present writ petition is filed challenging the impugned order in No.104-105/23-Cus dated 20.03.2023, whereby petitioner's claim for higher rate of duty drawback at 7.5%/ 7.1% was rejected by the revisional authority on the premise that petitioner had availed CENVAT credit.

2. Petitioner is a manufacturer of netted garments. Petitioner sells the manufactured netted garments in the domestic market while exporting a portion of the goods so manufactured. During April 2011 to October 2012, petitioner exported netted garments under the Drawback scheme on their own and through

a merchant exporter M/s.EBEL Fashion Private Limited. Petitioner had declared in the shipping bills that no CENVAT credit facility has been availed on any inputs or input services used in the manufacture of export goods. Petitioner would submit that they had inadvertently taken CENVAT credit of Rs.1,55,477/- on common services like freight, security, telephone, insurance, professional charges used in the manufacture of both domestic as well as export goods, however, on realising that these are common input services, petitioner had reversed the CENVAT credit so availed off along with interest on 05.10.2012. On 06.10.2012, there was a visit by the Department Audit Group of the petitioner's place of busines. During the course of such visit, the audit group pointed out that the petitioner had availed off CENVAT credit and thus may not be entitled to duty drawback at 7.5% and instead would be entitled to duty drawback only at 2.2%.

3. It was also pointed out by the learned counsel for petitioner that the duty drawback at 7.5% was thereafter reduced to 7.1% with effect from 10th month of 2011. In this regard, it may be relevant to refer to the relevant duty drawback schedule, which is extracted hereunder:

Duty Drawback Schedule 2011-2012:

			A		B	
Tariff Item	**Description of Goods**	**Unit**	**Drawback when Cenvat facility has not been availed**		**Drawback when Cenvat facility has been availed**	
			Drawback rate	**Drawback cap per unit in Rs.**	**Drawback rate**	**Drawback cap per unit in Rs.**
1	**2**	**3**	**4**	**5**	**6**	**7**
6109	T-shirts, singlets and other vests, knitted or crocheted					
…	…	…	..	..	…	….
6110	Jerseys, pullovers, cardigans, waistcoats an similar articles, knitted or crocheted					
611001	Of cotton	Piece	7.1%	65	2.2%	8.4

3.2. Thereafter, show cause notice came to be issued proposing to reject the petitioner's claim of higher rate of duty drawback only on the premise that CENVAT credit had been availed by the petitioner while rejecting the petitioner's explanation stating that CENVAT credit has since been reversed along with interest and thus cannot be treated as having been availed. The show cause notice was responded to by petitioner. The Show cause notice culminated in two orders viz., one order dated 10.01.2017 on M/s.EBEL Fashions Private Limited and another order dated 25.09.2018 on the petitioner. Aggrieved, both M/s.EBEL Fashions Private Limited and petitioner filed an appeal, the appellate authority agreed to the submissions of the petitioners and found that the petitioner herein was in fact entitled for high rate of duty drawback, however, when it came to the appeal filed by the merchant exporter M/s.EBEL Fashions Private Limited, they will be entitled only to lower rate of duty drawback. Aggrieved, Department filed a revision in the case of the petitioner, while M/s.EBEL Fashions Private Limited filed a revision against the order of the appellate authority insofar as it is adverse.

4. At this juncture, it was pointed out by the learned counsel for petitioner that M/s.EBEL Fashions Private Limited got merged with the petitioner with effect from 25.03.2021 and a common revision order has been passed which is the subject matter of challenge before this Court.

5. Learned counsel for petitioner would further submit that if MODVAT credit is utilised and thereafter refunded then it would amount to not utilising MODVAT credit at all. In this regard, the following judgments of the Supreme Court were relied upon:

i) <u>*Commissioner of Central Excise and Customs vs. Precot Meridian Ltd.,*</u> <u>reported in *2015 (325) E.L.T. 234 (S.C.):*</u>

"3. We not that five-Member Bench of the Tribunal in the case of 'Franco Italian Co.Pvt. Ltd. vs. Commissioner' [2000 (120) E.L.T. 792 (t.LB) had taken the view that even if the MODVAT credit was utilised but, thereafter, refunded, it would amount to not utilising the said MODVAT credit. Same view has been taken by the High Court of Allahabad in "Hello Minerals Water (P) Ltd. vs. Union of India" [2004 (174) E.L.T. 422(All.)].

4. On a specific query put by the Court, we were informed that as far as the aforesaid two judgments are concerned, they were accepted by the Department and no appeal was filed thereagainst. In the impugned judgment, the Tribunal has decided the issue in favour of the assessee relying upon the aforesaid two decisions."

ii) <u>Chandrapur Magnet Wires (P) Ltd. Versus Collector of Central Excise, Nagpur [1995 (12) TMI 72 – Supreme Court], dated 12.12.1995:</u>

"7. It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been. The contention of the Department that in this situation, the assessee is not entitled to reverse the entries and get the benefit of the tax exemption is a question which merits serious consideration. There is no doubt that the assessee should have maintained separate accounts for duty free goods and the goods on which duty has to be paid. But our attention was drawn to a departmental circular letter on this problem in which it has been clarified by the Ministry of Finance as under:

3. The credit account under MODVAT rules may be maintained chapter wise.

MODVAT credit is not available if the final products are exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. an end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacture of the final products, provided that credit of duty paid on the inputs used in such exempted products is debited in the credit account before the removal of such exempted final products.

8. The circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products.

7. In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be *denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods.*

8. The appeal is therefore, allowed. The order of the Customs, Excise and Gold (Control) Appellate Tribunal dated 17th May, 1995 is set aside. There will be no order as to costs."

6. Learned counsel for respondents would only submit that the revisional authority has passed a reasoned order and it does not warrant interference. It was further submitted that *Precot Meridian judgment* is not a binding precedent inasmuch it only affirms the order of the Allahabad High Court in *Hello Minerals* and that Department has not filed any appeal against *Hello Minerals*.

7. The above submission only needs to be noticed to be rejected inasmuch as *Precot Meridian* is an order passed by the Supreme Court in Civil Appeal No.3958 of 2007 dated 08.10.2015 and thus the order of Tribunal must be taken to have merged with the Supreme Court and thus would be binding on this Court. It may also be noted that the duty drawbacks are schemes which are framed to promote export which is important to earn foreign exchange and therefore hyper technical view ought not be adopted. Further, it has been repeatedly found by the Supreme Court while considering the scope of these notifications that a more liberal view must be taken. Here, it is a case where petitioner had

due to inadvertence initially availed credit and on realising the mistake had immediately i.e., even before issuance of any show cause notice had reversed the credit. In that view of the matter, the impugned order is set aside. The petitioner is thus entitled to appropriate duty drawback prevailing during the relevant period.

8. Accordingly, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

15-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
MKA

To:

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MOHAMMED SHAFFIQ J.

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