IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 77151 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMM/SIB/2018 dated 19.03.2018 in F.No.S121-159(a)/2016 SIB/289 passed by the Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700 001)

M/s. India Chain Private Limited **: Appellant**
238-B, A.J.C. Bose Road, 5th Floor,
Kolkata – 700 020

VERSUS

Commissioner of Customs (Port) **: Respondent**
15/1, Strand Road, Custom House,
Kolkata – 700 001

AND

Customs Appeal No. 77152 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMM/SIB/2018 dated 19.03.2018 in F.No.S121-159(a)/2016 SIB/289 passed by the Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700 001)

Shri Prateek Chitlangia, Chief Executive Officer, **: Appellant**
M/s. India Chain Private Limited
238-B, A.J.C. Bose Road, 5th Floor,
Kolkata – 700 020

VERSUS

Commissioner of Customs (Port) **: Respondent**
15/1, Strand Road, Custom House,
Kolkata – 700 001

APPEARANCE:

Shri S.P. Siddhanta, Consultant for the Appellant(s)

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75469-75470 / 2024

DATE OF HEARING / DECISION: 08.03.2024

Order : [Per Shri Ashok Jindal]

The appellants are in appeal against the impugned order for recovery of duty drawback already paid.

2. The facts of the case are that the appellant exported certain goods and filed shipping bills. Thereafter, the appellant claimed duty drawback. As per the Customs & Central Excise Duties Drawback Rules, 1995, if an exporter has not availed CENVAT Credit of duty / Service Tax paid by them, then they are entitled for higher drawback claim and if an exporter has availed CENVAT Credit, in such circumstances, they are entitled for less drawback claim. This is a case where the appellants were availing CENVAT Credit and filed their claim for duty drawback showing the same in their documents that they were availing CENVAT Credit.

2.1 The authorities below, by mistake, granted excess duty drawback to the appellants and the said drawback claim was claimed by the appellants during the period 2007 to 2009.

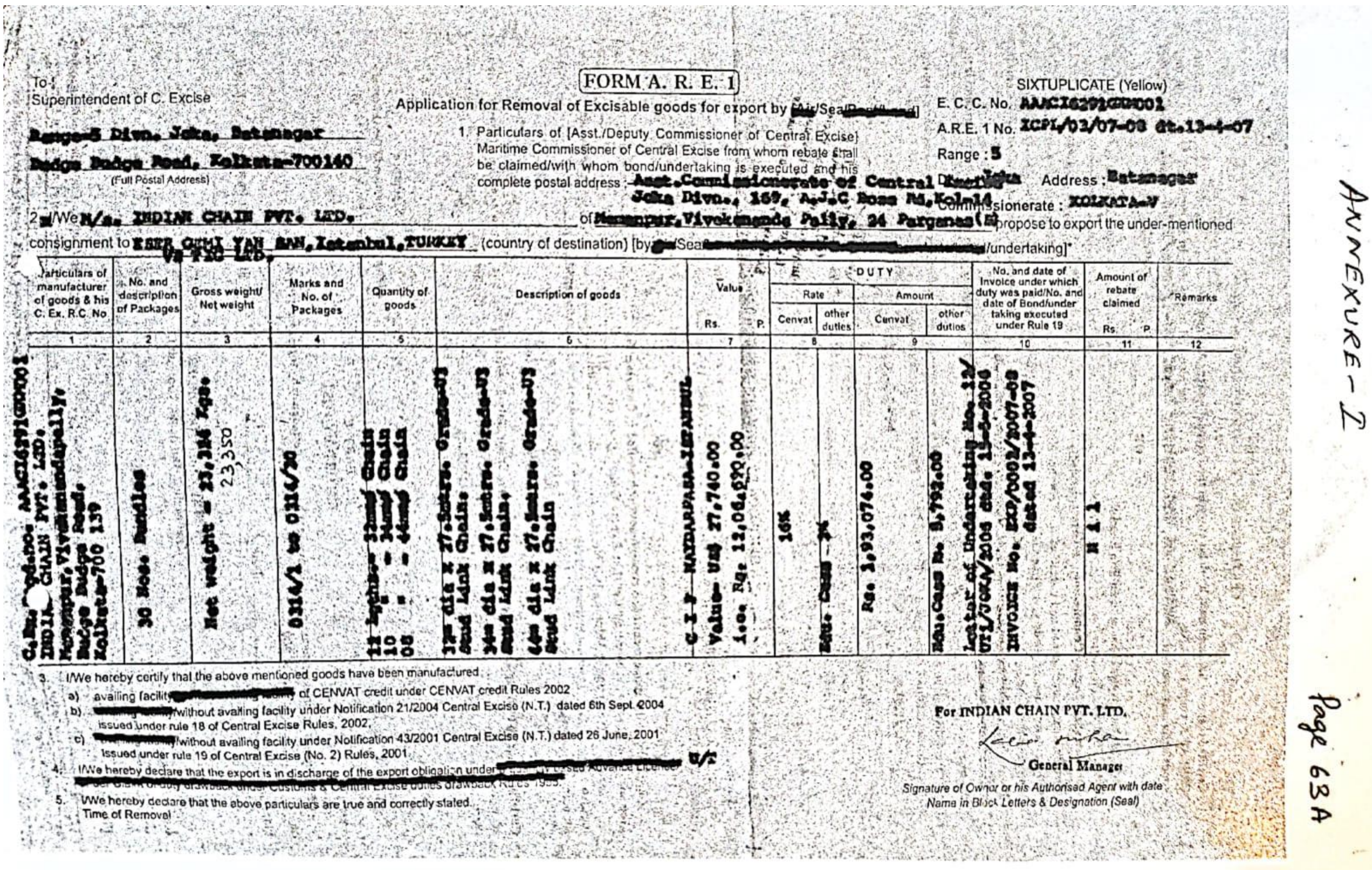
2.2 On 29th January, 2015, an investigation was conducted and it was found that the appellants had claimed excess duty drawback and therefore, proceedings were initiated against the appellant by issuing a Show Cause Notice dated 19.05.2017 which was received by the appellants on 16.06.2017. During pendency of the proceedings, out of the total amount of excess drawback claimed of Rs.63,29,050/-, the appellant paid Rs.51,81,424/- and contested the matter on limitation.

2.3 However, the adjudicating authority confirmed the demand for recovery of the excess drawback claimed by the appellants and appropriated the amount already paid and for the remaining amount, demand notice was served on the appellants; penalty of Rs.10,00,000/- has also been imposed on both the appellants. Aggrieved from the said order, the appellants are before us.

3. The Ld. Counsel appearing on behalf of the appellants contested the issue on limitation whereas the Ld. Authorized Representative appearing on behalf of the Revenue submitted that there is no time-limit to issue Show Cause Notice in the case of excess drawback claim under Rule 16 of the Customs & Central Excise Duties Drawback Rules, 1995.

4. Heard the parties and considered their submissions.

5. We find that the facts in this case are not in dispute. During the period 2007 to 2009, the appellants had filed claim of duty drawback, declared that they were availing CENVAT Credit on inputs and input services and the entertaining authority sanctioned excess drawback claim. To prove *bona fides*, the appellants produced Forms A.R.E.-1 for claiming drawback. One of the Forms A.R.E.-1 is reproduced hereinbelow for better appreciation of the facts (at Annexure-I page 63A): -



To
Superintendent of C. Excise
Range-5 Divn. Joka, Batanagar
Budge Budge Road, Kolkata-700140
(Full Postal Address)

FORM A. R. E. 1

Application for Removal of Excisable goods for export by [[redacted]/Sea[redacted]]

1. Particulars of [Asst./Deputy Commissioner of Central Excise] Maritime Commissioner of Central Excise from whom rebate shall be claimed/with whom bond/undertaking is executed and his complete postal address : Asst.Commissionerate of Central Excise Joka Divn., 169, A.J.C Bose Rd.,Kol-14

SIXTUPLICATE (Yellow)
E. C. C. No. AAACI6291GXM001
A.R.E. 1 No. ICPL/03/07-08 dt.13-4-07
Range : 5
Division : Joka Address : Batanagar
Commissionerate : KOLKATA-V

2. I/We M/s. INDIAN CHAIN PVT. LTD. of Mansapur, Vivekananda Pally, 24 Parganas(S) propose to export the under-mentioned consignment to ESER GEMI YAN SAN, Istanbul, TURKEY Vs TIC LTD. (country of destination) [by [redacted]/Sea[redacted]/undertaking]*

Particulars of manufacturer of goods & his C. Ex. R.C. No	No. and description of Packages	Gross weight/ Net weight	Marks and No. of Packages	Quantity of goods	Description of goods	Value Rs. P.	DUTY Rate Cenvat	other duties	Amount Cenvat	other duties	No. and date of Invoice under which duty was paid/No. and date of Bond/undertaking executed under Rule 19	Amount of rebate claimed Rs. P.	Remarks
1	2	3	4	5	6	7	8		9		10	11	12
C. Ex. Regd. No. AAACI6291GXM001 INDIAN CHAIN PVT. LTD. Mansapur, Vivekanandapally, Budge Budge Road, Kolkata-700 139	30 Nos. Bundles	Net weight = 23,3[illegible] Kgs. 23350	0314/1 to 0314/30	12 Bundles 32mm Chain 10 " 36mm Chain 08 " 46mm Chain	32mm dia x 27.5mtrs. Grade-U3 Stud Link Chain; 36mm dia x 27.5mtrs. Grade-U3 Stud Link Chain; 46mm dia x 27.5mtrs. Grade-U3 Stud Link Chain	C.I.F. HAYDARPASA-ISTANBUL Value- US$ 27,740.00 i.e. Rs. 12,06,690.00	16%	Edu. Cess - 2%	Rs. 1,93,074.00	Edu.Cess Rs. 3,792.00	Letter of Undertaking No. 12/ UT1/JOKA/2006 dtd. 15-5-2006 INVOICE No. EXP/0002/2007-08 dated 13-4-2007	N i l	

3. I/We hereby certify that the above mentioned goods have been manufactured
a) availing facility [redacted] of CENVAT credit under CENVAT credit Rules 2002
b) [redacted]/without availing facility under Notification 21/2004 Central Excise (N.T.) dated 6th Sept. 2004 issued under rule 18 of Central Excise Rules, 2002.
c) [redacted]/without availing facility under Notification 43/2001 Central Excise (N.T.) dated 26 June, 2001 issued under rule 19 of Central Excise (No. 2) Rules, 2001.
4. I/We hereby declare that the export is in discharge of the export obligation under [redacted] U/T
5. I/We hereby declare that the above particulars are true and correctly stated.
Time of Removal

For INDIAN CHAIN PVT. LTD.
General Manager
Signature of Owner or his Authorised Agent with date Name in Block Letters & Designation (Seal)

ANNEXURE - I

Page 63A

5.1 We find that it is a fact borne on the record that the appellant has declared that they were availing CENVAT Credit, but the adjudicating authority itself had sanctioned a higher claim to the appellant and for that claim, the Show Cause Notice has been issued to the appellants for recovery of the excess claim, which was received by the appellants on 16.06.2017 i.e., after almost eight years of sanctioning of the said drawback claim. In these circumstances, it is to be seen whether the said demand is barred by limitation or not.

6. It is a fact that under Rule 16 of the Customs & Central Excise Duties Drawback Rules, 1995 no time-limit is prescribed. In these circumstances, what would be the time-limit to recover excess drawback claim sanctioned to an assessee? The said issue has been examined by the Hon’ble Punjab and Haryana

High Court in the case of *M/s. Famina Knit Fabs v. Union of India [2020 (371) E.L.T. 97 (P&H)]* wherein it has been held that in the absence of any period prescribed under Rule 16 of the Customs & Central Excise Duties Drawback Rules, 1995, it has to be within reasonable time and such "reasonable time" was held to be a maximum of five years to issue Show Cause Notice. The Hon'ble Punjab and Haryana High Court has observed as under: -

> *"10. Question No. (ii) Whether demand of duty drawback under Rule 16 of the Drawback Rules, 1995 can be made without any reasonable period of limitation?*
>
> *All the judgments including judgments of Hon'ble Supreme Court in the case of Raghuvar (India) Ltd (Supra) and Citadal Fine Pharamaceutical (Supra) cited by counsels for Respondents hold that in the absence of specific period, action should be taken within reasonable period, thus both sides are at idem that every action in the absence of prescribed period should be initiated within reasonable period and what would be reasonable period would depend upon facts and circumstances of each case. Gujrat High Court in the case of Padmini Exports Vs UOI 2012 (284) ELT 325 and Pratibha Syntex Ltd 2013 (287) ELT 290 while dealing with question of reasonable period of limitation applicable to notice issued under Rule 16 of the Drawback Rules, 1995 and applicability of Section 28 has held that Section 28 of Act, 1962 is not applicable, however three years period is reasonable period to issue show cause notice for raising demand of duty drawback. The counsels for the Respondent contended that present case is of mis-declaration of value so judgments of Gujrat High Court are not applicable.*
>
> *In response, Counsel for the Petitioner contended that as per Section 28 of Act, 1962 show cause notice cannot be issued beyond 5 years even in case of fraud, wilful mis-statement or suppressions of facts and in the present case prior to 8.4.2011 (10 shipping bills) assessment of shipping bills was framed by Proper Officer-Respondent and after 8.4.2011 (2 shipping bills) assessment qua declared valued was reduced or accepted by Respondent so notice dated 9.2.2018 could not be issued beyond 5 years from the date of assessment/export.*
>
> *Hon'ble Supreme Court in the case of Bhatinda District Co- op. Milk (Supra) while deciding question of reasonable period of limitation for invoking revisional jurisdiction under PGST Act, 1948 applied limitation period prescribed*

under Section 11(6) of the PGST Act, 1948 and concluded that reasonable period cannot be more than 5 years. Applying said judgment, this court in the case of Gupta Smelter Pvt. Ltd Vs UOI 2019 (365) ELT 77 has set aside show cause notice which was issued for framing final assessment under Section 18 of Customs Act, 1962 on the sole ground that it was issued after 5 years from the date of bill of entry. This court in the case of GPI Textiles Ltd. Vs UOI, CWP No. 10530 of 2017 has set aside show cause notice issued under Section 11A of the Central Excise Act, 1944 raising demand of duty on the ground of its non- adjudication within reasonable period. This court in the case of CCE Vs Hari Concast (P) Ltd. 2009 (242) ELT 12 has held that notice of penalty issued under Central Excise Act, 1944 beyond 5 years is bad in the eye of law even though no limitation period is prescribed for penalty.

From the perusal of judgments cited by both sides, it is quite evident that every action including show cause notice must be issued within reasonable period where no limitation is prescribed. Taking cue from Section 28 of Act, 1962 which prescribes maximum 5 years period to issue show cause notice even in case of fraud, wilful mis-statement and afore- cited plethora of judgments, we find that in every case 3 years period may not be reasonable (as otherwise held by Gujrat High Court in Pratibha Syntex case (Supra), however notice issued after the expiry of 5 years cannot stand in the eyes of law. It would be apt to notice here that goods were exported during 2007-2012 after due verification by Customs officers and DRI searched premises on 27.12.2012 whereas impugned show cause notice came to be issued on 9.2.2018 means after the expiry of 5 years even from the date of search.

Notice has been issued under Rule 16 and not 16A of Drawback Rules, 1995 so it is admitted fact that foreign currency stands realized thus in the absence of laying down some period as reasonable period, there would never be conclusion of assessment and it would be at the whims and fancies of Respondent to open any assessment at any point of time. Under Customs Act, 1962 every consignment passes through scrutiny of team of Customs officers and there may be mistake on the part of customs officers in one or two cases but cannot be so in every shipping bill. If contention of DRI is accepted, no assessment would conclude till an agency investigates and opines in one or another manner. Respondents have not cited any provision which either declares that no export is complete till NOC is issued by DRI or DRI has unlimited and unguided powers over and above the Customs Officers as well Customs Act, 1962. It would be against the purport and intent of Limitation Act. Period of 5 years for all purposes is reasonable period so we hold that any notice issued under Rule 16 of Drawback Rules,

> *1995 beyond 5 years from the date of export is bad in the eyes of law and barred by limitation. Accordingly, we answer this question in favour of Petitioner."*

6.1 As the said issue has been examined by the Hon'ble Punjab and Haryana High Court in the case of *M/s. Famina Knit Fabs (supra)*, in case no time-limit is prescribed for recovery of excess drawback claim under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the reasonable period for recovery of the same is five years. Admittedly, in the case on hand, the Show Cause Notice has been issued beyond the time-limit of five years and in these circumstances, we hold that the Show Cause Notice issued to the appellants is barred by limitation.

7. Accordingly, the impugned order deserves no merits and hence, the same is set aside.

8. In the result, the appeals are allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd