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WPC.No.5495/23

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 4TH DAY OF JUNE 2025 / 14TH JYAISHTA, 1947

WP(C) NO.5495 OF 2023

PETITIONER:

M/S.GINGER FASHIONS PVT. LTD,
NO. 61, SRI NIVAS 6TH MAIN ROAD, SBI OFFICERS
COLONY, BASAVESHWARA NAGAR, BANGALORE-560 079,
REPRESENTED BY ITS MANAGING DIRECTOR, SHRI.
ASHISH SHANKAR SHETTY.

BY ADVS.
SRI.M.BALAGOPAL
SRI.R.SREEJITH
SMT.R.DEVIKA

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY THE ADDITIONAL SECRETARY,
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, 14, HUDCO, VISHALA
BUILDING, B WING, 6TH FLOOR, BHIKAJICAMA PLACE,
NEW DELHI, PIN - 110 066.
- 2 THE COMMISSIONER OF CUSTOMS,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM
HOUSE, WILLINGTON ISLAND, COCHIN, PIN - 682 009.
- 3 THE DEPUTY COMMISSIONER OF CUSTOMS (DRAWBACK),



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*CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM
HOUSE, WILLINGTON ISLAND, COCHIN, PIN - 682 009.*

BY ADV SHRI.P.R.SREEJITH

*THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.06.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:*



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JUDGMENT

The petitioner is engaged in the export of garments to various countries. The petitioner has approached this Court, being aggrieved by Ext.P14 order, by which the revision petition filed by the petitioner against the order declining the drawbacks claimed by the petitioner for the exports made by him by way of two shipping bill were declined.

2. Facts that lead to the filing of this writ petition are as follows:

As part of the business activities, the petitioner exported certain items as per the shipping bills dated 01.07.2014 and 09.07.2014. The claim for drawback for the exports made as per the aforesaid shipping bills were declined by the 3rd respondent as per Ext.P9 order, on the reason that the amounts were received by the petitioner after the period stipulated under Section 75 of the Customs Act, 1962 read with Rule 16A of Central Customs and Excise Duties and Service Tax Drawback Rules 1995. Even though an appeal was filed challenging the said order, it culminated in Ext.P12 order which



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was challenged in a revision petition. The same culminated in Ext.P14 order. This writ petition is submitted challenging the same.

3. A statement has been filed by the respondents 1 to 3, wherein the contentions and reliefs sought by the petitioner are opposed by stating that the impugned orders were passed in accordance with law, as the petitioner could not prove that the repatriation of the amounts covered by the shipping bills referred to above, were within the time limit stipulated in the relevant provisions or within the extended period. Therefore, they sought dismissal of the writ petition.

4. Heard Sri.M.Balagopal, the learned counsel for the petitioner and Sri.S.Sreejith, the learned standing counsel for the respondent.

5. The specific contention put forward by the learned counsel for the petitioner is that, the authorities concerned rejected the claim of the petitioner mainly under the impression that the extension of the time is required to be obtained from the Reserve Bank of India itself. It was pointed out with specific reference to the Master Circular issued in this regard,



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which is produced as Ext.P15, that the extension can be made by the AD category I bank as well. The learned counsel for the petitioner brought the attention of this Court to Exts.P6 and P11 communications issued by AD-I Bank of the petitioner to substantiate that such extension was granted by the Bank and therefore the petitioner is eligible to the drawbacks in proportion of the amounts that got repatriated.

6. On the other hand, the objections of the learned standing counsel for the respondents is by placing reliance upon Exts.P3 and P4, which are issued by the Directorate General of Foreign Trade, wherein, it is specifically mentioned that the date of realization of the money by the bank was on 13.06.2016 and there are no documents to establish that there was indeed an extension of time as permitted in Rule 16A either by the Reserve Bank of India or by the AD-I Bank.

7. As far as the claim of drawback is concerned, the same is contemplated under Section 75 of the Customs Act, which enables the exporter to claim drawback in respect of the value of the exports made by him subject to the conditions stipulated therein. Rule 16A of the Central Excise Duties



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Drawback Rules deals with the recovery of drawback where the export proceeds are not realized within the time frame allowed under the Foreign Exchange Management Act, 1999.

The said provision reads as follows:

“16A. Recovery of amount of Drawback where export proceeds not realized. -

(1) Where an amount of drawback has been paid to an exporter or a person authorized by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under [the Foreign Exchange Management Act, 1999 (42 of 1999)], including any extension of such period, such drawback shall [except under circumstances or conditions specified in sub-rule (5)] be recovered in the manner specified below:

[Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.]

(2). [If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commission of Customs, as the case may be] shall cause notice to be issued to the exporter for



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production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of [thirty days, the Assistant Commissioner of Customs, as the case may be] shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within sixty days of the receipt of the said order :

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to one total amount of sale proceeds;

(3). Where the exporter fails to repay the amount under sub-rule (2) within said period of sixty days referred to in sub-rule (2), it shall be recovered in the manner laid down in Rule 16.

(4). Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation [within a period of three months from the date of realisation of sale proceeds], the amount of drawback so recovered shall be repaid by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] to the claimant.



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[Provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India]

[Provided that

- i. the [Principal Commissioner of Customs or Commissioner of Customs, as the case may be] or [Principal Commissioner or Commissioner] of Customs and Central Excise, as the case may be may extend the aforesaid period of three months by a period of nine months provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India;
- ii. an application fee equivalent to 1% of the FOB value of exports or Rs.1000/- whichever is less, shall be payable for applying for grant of extension by the [Principal Commissioner of Customs or Commissioner of Customs, as the case may be] or [Principal Commissioner or Commissioner] of Customs and Central Excise, as the case may be.

5. Where sale proceeds are not realised by an exporter within the said 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



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drawback paid to the exporter or the claimant shall not be recovered.]

8. As per sub rule 2 of Rule 16A, if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or within the period of any extension by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, or Deputy Commissioner of Customs, may recover the said amount from the exporter after complying with procedure contemplated therein. As rightly pointed out by the learned counsel for the petitioner, even though Rule 16A specifically refers to the extension of the period by the RBI, the Master Circular published in this regard indicates that the RBI authorized the AD-I Banks to grant such extension for the purpose of claiming the benefit of drawback. Therefore, the question that has to be considered is whether there is any extension of time by the AD-I Bank as far as the case of the petitioner is concerned.

9. To establish the said extension, the documents relied on by the petitioner are Exts.P6, P10 and P11. Ext.P6 is a



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certificate issued by the AD-I Bank which indicates that the amount receivable as per the two shipping bills which are subject matter of this dispute, were received by the Bank on 01.07.2014 and 09.07.2014 respectively and the amount received was shown as 34956 USD. Ext.P10 is a communication addressed to the AD-I bank, from the petitioner, wherein the petitioner requested the Bank to regularize the demands referred to in the aforesaid shipping bills, for the delay in the remittance. According to the petitioner, Ext.P11 was issued in response to Ext.P10, wherein it is mentioned by the AD-I bank that all the transactions of the petitioner has now been regularised. All the export repatriation of the petitioner were regularized and at present there is no pending shipping bills for payment for the said exporter. Thus, based on the aforesaid documents, the specific case advanced by the learned counsel for the petitioner is that, Ext.P6 issued by the AD-I bank read with Ext.P11 would clearly indicate that, the period stipulated in Rule 16A stand extended and therefore, the petitioner is entitled to get the drawbacks, as the same falls within the extended period as permissible under the said rules.



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It is also pointed out that, going by Ext.P6 document, the delay in repatriation were only 29 and 20 days respectively in respect of the said shipping bills.

10. Moreover, in response to the contentions of the learned standing counsel that the date of realization mentioned in Ext.P3 and Ext.P4 were 30.01.2016, it was pointed out that the said date refers to the ultimate settlement of the entire transactions with the party concerned, as there were certain disputes. It was also pointed out that as far as the amount covered by Ext.P6 is concerned there cannot be any doubt and therefore, to the extent of the amount referred therein, the petitioner is eligible for the drawback. When going through the impugned orders, it is discernible that, the documents referred to above could not be considered because, evidently Ext.P11 was obtained by the petitioner after original order, which is Ext.P9. Moreover, Ext.P11 does not contain a specific reference to the earlier transactions and therefore the mere production of the same by itself cannot be an indicator of the fact that there was an extension of time by the AD-I bank, as stipulated in Rule 16A. These are matters to be examined.



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However, it is to be clarified that, if the amount received by the petitioner as evidenced by Ext.P6 on 29.04.2015 was within the period of an extension as required in Rule 16A, then the petitioner should be entitled to get the benefit of drawback. It is also to be noted that, going by Ext.P15 Master Circular, it is not necessary that extension should come from the Reserve Bank of India itself as the AD-I bank are authorized to grant such extension. Therefore, the question as to whether the receipt of the amount as evidenced by Ext.P6 was on the basis of extension as contemplated under Section 16A is a matter which requires to be considered. Since such a consideration is could not be made in any of the impugned orders, I am of the view that it needs to have a reconsideration.

In such circumstances, this writ petition is disposed of quashing Exts.P9, P12 and P14 with a direction to the 3rd respondent to reconsider the claim of the petitioner and take a fresh decision after taking into account all the documents referred to in this writ petition and with specific reference to Ext.P6, P10 and P11. It shall be open for the petitioner to produce such further documents before the 3rd respondent to



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establish the receipt of the amounts covered by the shipping bills referred to above and also the extension of time by the AD-I bank. Such a fresh order in this regard has to be passed by the 3rd respondent within a period of three months from the date of receipt of a copy of this judgment after giving the petitioner an opportunity to be heard.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE



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APPENDIX OF WP(C) 5495/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE NOTICE F. NO. S34/05/2017-DBK CUS. PART (236) DATED 16.02.2017 ALONG WITH ENCLOSURES ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
Exhibit P2	TRUE COPY OF THE LETTER F. NO.S34/05/2017 DBK CUS. PART (236) DATED 22.03.2017
Exhibit P3	TRUE COPY OF THE STATEMENT OF BANK REALIZATION WITH RESPECT TO SHIPPING BILL NO. 3613451 DATED 01.07.2014
Exhibit P4	TRUE COPY OF THE STATEMENT OF BANK REALIZATION WITH RESPECT TO SHIPPING BILL NO. 3763369 DATED 09.07.2014
Exhibit P5	TRUE COPY OF THE PETITIONER'S LETTER DATED 05.04.2017 TO THE 3RD RESPONDENT
Exhibit P6	TRUE COPY OF THE CERTIFICATE DATED 30.03.2017 ISSUED BY M/S. CITY UNION BANK LIMITED ALONG WITH ENCLOSURES
Exhibit P7	TRUE COPY OF THE PETITIONER'S LETTER DATED 04.05.2017 TO THE 3RD RESPONDENT ALONG WITH ENCLOSURES.
Exhibit P8	TRUE COPY OF THE E-MAIL DATED 08.05.2017 RECEIVED BY THE PETITIONER FROM THE 3RD RESPONDENT'S OFFICE.
Exhibit P9	TRUE COPY OF THE ORDER NO. 111/2017 DATED 09.05.2017 PASSED BY THE 3RD RESPONDENT.
Exhibit P10	TRUE COPY OF THE PETITIONER'S REQUEST LETTER DATED 12.06.2017 TO THE AUTHORIZED DEALER BANK
Exhibit P11	TRUE COPY OF THE CERTIFICATE DATED 28.06.2018 ISSUED BY M/S. CITY UNION BANK LIMITED
Exhibit P12	TRUE COPY OF THE ORDER-IN-APPEAL NO. COC-CUSTM-000-APP-36/2018-19 DATED 30.07.2018 PASSED BY THE COMMISSIONER



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OF CUSTOMS (APPEALS)

Exhibit P13

TRUE COPY OF THE WRITTEN SUBMISSIONS
DATED 25.01.2023 FILED BY THE
PETITIONER'S COUNSEL BEFORE THE 1ST
RESPONDENT

Exhibit P14

TRUE COPY OF THE ORDER NO. 24/23-CUS.
DATED 25.01.2023 PASSED BY THE 1ST
RESPONDENT

Exhibit P15

TRUE COPY OF THE RELEVANT PAGES OF THE
MASTER CIRCULAR ON EXPORT OF GOODS AND
SERVICES NO. 14/2015-16 DATED
01.07.2015 ISSUED BY THE RESERVE BANK
OF INDIA IS PRODUCED HERewith AND
MARKED AS EXHIBIT-P15 FOR
IDENTIFICATION.