

2019-TIOL-1648-HC-P&H-CUS

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CWP 6615/2017(O&M)

M/s AABHAS SPINNERS PVT LTD AND ANOTHER

Vs

UNION OF INDIA AND OTHERS

Jaswant Singh & Lalit Batra, JJ

Dated: July 23, 2019

Appellant Rep by: Mr Amar Partap Singh, Adv.

Respondent Rep by: Mr Sourabh Goel, Adv.

Cus - The petitioner is engaged in business of import of yarn - During period 2005 to 2007, it imported various types of yarn and blankets allegedly after following due procedure - The DRI received intelligence that the petitioner was indulging in evasion of Custom Duty by mis-declaring the value and description of yarn/incompletely declaring the description of yarn - Prayer in the present petition is to quash SCN; strike down the Customs (Amendment and Validation) Act, 2011 to the extent of inserting sub-section 11 to Section 28 of the Act, being invalid and bad in law; and to strike down Section 28(11) of the Act being violative of Article 14 of Constitution - At the time of hearing, it is stated by respondents that the impugned SCN already stands adjudicated and against said order, petitioner has already availed the remedy of appeal under the provisions of Customs Act in June 2019 - Petitioner does not dispute the fact that statutory appeal before Tribunal, Chandigarh already stands filed and therefore, two parallel proceedings cannot continue: HC

Writ petition disposed of

JUDGEMENT

Per: Jaswant Singh:

1. Petitioner-firm, situated in Ludhiana, is engaged in the business of import of yarn. During the period 2005 to 2007 it imported various types of yarn and blankets allegedly after following due procedure. The Directorate of Revenue Intelligence-respondent no.3 purportedly received intelligence that the petitioner firm was indulging in evasion of Custom Duty by mis-declaring the value and description of yarn/incompletely declaring the description of yarn. Accordingly searches were carried out by respondent no.3 on 5.11.2007.
2. On the basis of investigations carried out it was allegedly revealed that the petitioner had also imported yarn and made subsequent sale thereof in India adopting similar modus operandi of mis-declaration and under valuation. Thereafter factory-cum-business premises of the petitioner-company were searched by the DRI on 22.1.2009 and 23.1.2009 and certain goods,cash and mutual funds etc.were seized.
3. Petitioner filed CWP 7972/2009 in this Court and vide order dated 23.9.2009 passed by this Court the seized goods, cash and mutual funds etc., were released. Subsequently respondent no.2 issued Show Cause Notice dated 14.1.2010 (P-1) to the petitioner company alleging evasion of customs duty of Rs.246.35 lacs by mis-declaring the value and description of yarn as also by incompletely declaring the description of the yarn imported by petitioner from China and Singapore. Further in the said show cause notice (P-1) customs duty along with interest under

Section 26 AB of the Customs Act,1962 (hereinafter referred to as the Act) and penalty under Section 114A of the Customs Act was demanded.

4. Prayer in the present petition is to quash show cause notice (P-1); strike down the Customs (Amendment and Validation) Act, 2011 to the extent of inserting sub-section 11 to Section 28 of the Act, being invalid and bad in law; and to strike down Section 28(11) of the Act being violative of Article 14 of the Constitution.

5. Upon notice written statement has been filed on behalf of respondents 1 to 4 through Dipak Kumar Gupta, Commissioner of Customs, Customs Preventive Commissionerate, Amritsar.

6. At the time of hearing, it is stated by the learned counsel for the respondents that the impugned show cause notice (P-1) already stands adjudicated vide order dated 11.3.2019 (R-1/1) passed by the Commissioner of Customs, Amritsar and against said order, petitioner has already availed the remedy of appeal under the provisions of Customs Act in June 2019.

7. Learned counsel for the petitioner does not dispute the fact that statutory appeal before CESTAT, Chandigarh already stands filed and therefore, two parallel proceedings cannot continue.

8. In view of the above, present writ petition is disposed of by relegating the petitioners to pursue the remedy of appeal already filed before the CESTAT, Chandigarh.