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

+ **W.P.(C) 13375/2023**

**M/S GUNJAN EXPORTS**

..... Petitioner

Through: Mr. Sanjeev Anand, Sr. Adv.  
with Mr. Sameer Sood, Adv.

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through: Ms. Sonu Bhatanagar, Sr.  
Standing Counsel with Ms.  
Monica Benjamin and Ms.  
Nishta Mittal, Advs. for R-2  
and R-3

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

**11.10.2023**

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1. In the present Petition, the petitioner questions the validity of the Show Cause Notice [**'SCN'**] dated 03 February 2022 which has come to be issued under Section 124 and Section 75(1) of the Customs Act, 1962 [**'Act'**] read with Rule 16A of Customs, Central Excise & Service Tax Drawback Rules, 1995 [**'1995 Rules'**]. In terms of the SCN, the respondents have proposed to take the following action:-

“21. Now, therefore of M/s. Gunjan Exports (IEC No. 0593002253) are hereby called upon and to show cause to the Jt. Addl. Commissioner of Customs, Centralised Export Assessment Cell, Office of the Commissioner of Custom, NS-II, Jawaharlal Nehru Custom House, NHAVA SHEVA, TAL- Uran, Dist- Raigad- 400707, Maharastra as to why:-

I. The goods covered under 04 Shipping Bills No. 4038207 dated 09.11.2015, 3747879 dated 26.10.15, 3747469 dated 26.10.2015 and 9397228 dated 05.05.2015 as mentioned in Table 4 should not be confiscated under the provisions Section 113(i) of the Customs Act, 1992, however as the



- goods are not available for confiscation, redemption fine on ABOVE Shipping Bills should not be imposed.
- II. FOB value declared for the four Shipping Bills as mentioned in Table 4 should not be rejected and re-determined to Rs. 86,98,607/-. Hence drawback claimed for the impugned Shipping Bills should not be reduced to Rs. 2,66,171/-.
  - III. The drawback claim amounting to Rs. 1,86,47,322/- (Rs. One Crore Eighty Six Lakh Forty Seven Thousand Three Hundred and Twenty Two Only) against the FOB amount Rs. 31,94,56,897.4/- between the year 2006 to 2017 should not be rejected and re-determined to Rs. 40,90,773/-.
  - IV. The inadmissible drawback amounting to Rs. 1,45,56,549/- (One Crore Forty Five Lakh Fifty Six Thousand Five Hundred And Forty Nine Only) against the FOB amount Rs. 31,94,56,897.4/- between the year 2006 to 2017 should not be recovered from the exporter M/s. Gunjan Exports (IEC No. 0593002253) under Rules 16 & 16A of the Customs, Central Excise Duties and Service Tax Drawback Rule, 1995 read with Section 75(1) of the Customs Act, 1962.
  - V. The interest on wrongly availed duty drawback of Rs. 1,45,56,549/- (One Crore Forty Five Lakh Fifty Six Thousand Five Hundred and Forty Nine Only) should not be recovered from the exporter M/s. Gunjan Exports (IEC No. 0593002253), Exports under Section 75(2) of the Customs Act, 1962.
  - VI. Penalty should not be imposed under Section 114 A of the Customs Act, 1962 on M/s. Gunjan Exports (IEC No. 0593002253) for wilful Mis-Declaration of the subject goods covered under 04 Shipping Bills No. 4038207 dated 09.11.2015, 3747879 dated 26.10.15, 3747469 dated 26.10.2015 and 9397228 dated 05.05.2015.
  - VII. Penalty should not be imposed under Section 114 A of the Customs Act, 1962 on Shri Jatin Madan and Shri Surinder Madan, proprietor of M/s. Gunjan Exports (IEC No. 0593002253) for his submission and signing of false or incorrect declaration in the transactions under the Customs Act, 1962.”

2. The SCN is challenged principally on a perceived statutory requirement of pre-notice consultation being undertaken before the issuance of a SCN. It is in this backdrop that learned senior counsel had placed reliance on the judgment rendered in **M/s Back Office IT Solutions Private Limited vs. Union of India and Others** [2021



SCC OnLine Del 2742] and other judgments which have followed the aforesaid decision. Reliance was also placed on Master Circular No. 1053/02.2017-CX dated 10 March 2017 to submit that pre-notice consultation is a mandatory pre-requisite.

3. We, however, find that the concept of pre-notice consultation stands incorporated only in Section 28 of the Act and more particularly in terms of the First Proviso appended to sub-section (1) of that provision. The action which is proposed to be taken in terms of the SCN, however, rests on the provisions of Section 124 and the 1995 Rules. Those provisions neither mirror nor adopt the principles of pre-notice consultation.

4. We consequently find no merit in the challenge raised to the impugned SCN. The petition fails and shall stand dismissed.

**YASHWANT VARMA, J.**

**DHARMESH SHARMA, J.**

**OCTOBER 11, 2023**

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