IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7165 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 8600 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 8689 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 10699 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MS. JUSTICE SONIA GOKANI Sd/-

and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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RAGHAV INTERNATIONAL
THROUGH PROPRIETOR VISHAL BHARATBHUSHAN JAIN
& OTHERS

Versus

UNION OF INDIA & ANR.

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Appearance:
MR HARSHADRAY A DAVE, ADVOCATE for the Petitioners
MR NIKUNT K RAVAL, SENIOR STANDING COUNSEL assisted by
MR KARAN SANGHANI, ADVOCATE for the Respondents - Authorities

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CORAM: **HONOURABLE THE CHIEF JUSTICE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 22/02/2023

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)

1. The petitioners are before this Court seeking to mainly challenge the show-cause notice issued by the respondent Authority after a period of about more than six/ten years, which are not permissible as per the settled legal position.

2. Since common issue is involved in all these four petitions being Special Civil Applications Nos.7165, 8600, 8685 and 10699 of 2021, with consent of learned advocates for the respective parties, all the matters are heard together and are decided by this common Judgment.

3. The brief facts of the all these matters are epitomized as under :

3.1 Special Civil Application Number 7165 of 2021 :

3.1.1 The petitioners are engaged in business of export of ready-made garments falling under the Chapter Heading

61 and 62 of Customs Tariff Act, 1975. The petitioners are mainly exporting the goods to UAE and Africa.

3.1.2 The petitioners had exported various goods through various shipping bills during the period of 2011-2015. Such shipping bills were assessed finally by the proper officer and the said assessment had attained finality. Accordingly, the benefit of duty drawback pursuant to such assessment was given to the petitioners.

3.1.3 Respondent No.2 vide notice dated 16.03.2021 sought recovery of excess of the duty drawback so paid, during the year 2014-2015 under the provisions of Rule 16 of Duty Drawback Rules, 1995.

3.1.4 Therefore the petitioners have challenged such notice on various grounds, including the ground that the Show Cause Notice under Rule 16 cannot be issued beyond a period of 3 years being reasonable period of limitation, since no limitation is provided for under the Act or the Rules.

3.1.5 During the pendency of this petition, respondents No.3 to 5 issued Show Cause Notices dated 01.04.2021, 06.04.2021 and 20.05.2021, for the same assessment period from 2011 to 2015 and for the same shipping bills. These

notices are also under challenge by the petitioners on the same grounds by appropriate draft amendment.

3.2 Special Civil Application Number 8600 of 2021 :

3.2.1 The petitioners of this petition are engaged in business of export of nuts, bolt, washer, hand tools etc., falling under the Chapter Heading 7318, 8205, 3926 of Customs Tariff Act, 1975. The Petitioners are mainly exporting the goods to Gulf and Upper Gulf Countries.

3.2.2 The petitioners had exported various goods through various shipping bills during the period between 01.01.2014 to 31.12.2014. Such shipping bills were assessed finally by the proper officer and the said assessment had attained finality. Accordingly, the benefit of Duty Drawback pursuant to such assessment was given to the petitioners.

3.2.3 Respondent No.2 vide notice dated 09.04.2021 sought recovery of excess of the duty drawback so paid during the aforesaid period under the provisions of Rule 16 of Duty Drawback Rules, 1995. It was therefore this petition was preferred challenging such notice on various grounds including the ground that the Show Cause Notice under Rule 16 cannot be issued beyond a period of 3 years being reasonable period of limitation since no limitation is provided

for under the Act or the Rules.

3.3 Special Civil Application Number 8685 of 2021 :

3.3.1 The petitioners of this petition are engaged in business of export of fully threaded rods, pickaxe, hoe, Nuts, bolt, washer, hand tools etc. falling under the Chapter Heading 7318, 8205, 3926 of Customs Tariff Act, 1975. The Petitioners are mainly exporting the goods to Saudi Arabia, UAE, Kuwait, Jordan etc.

3.3.2 The petitioners had exported various goods through various shipping bills during the period from 2014 to 2015. Such shipping bills were assessed finally by the proper officer and the said assessment had attained finality. Accordingly, the benefit of Duty Drawback pursuant to such assessment was given to the petitioners.

3.3.3 Respondent No.2 vide notice dated 05.05.2021 sought recovery of excess of the duty drawback so paid during the aforesaid period under the provisions of Rule 16 of Duty Drawback Rules, 1995. It was therefore this petition was preferred challenging such notice on various grounds including the ground that the Show Cause Notice under Rule 16 cannot be issued beyond a period of 3 years being

reasonable period of limitation since no limitation is provided for under the Act or the Rules;

3.4 Special Civil Application Number 10699 of 2021:

3.4.1 The petitioners of this petition are engaged in business of export of Nuts, bolt, washer, hand tools etc. falling under the Chapter Heading 7318, 8205, 3926 of Customs Tariff Act, 1975. The Petitioners are mainly exporting the goods to Gulf and Upper Gulf Countries.

3.4.2 The petitioners had exported various goods through various shipping bills during the period 2011 to 2016. Such shipping bills were assessed finally by the proper officer and the said assessment had attained finality. Accordingly, the benefit of Duty Drawback pursuant to such assessment was given to the petitioners.

3.4.3 Respondent No.2 vide notice dated 24.03.2021 sought recovery of excess of the duty drawback so paid during the aforesaid period under the provisions of Rule 16 of Duty Drawback Rules, 1995. It was therefore this petition was preferred challenging such notice on various grounds including the ground that the Show Cause Notice under Rule 16 cannot be issued beyond a period of 3 years being

reasonable period of limitation since no limitation is provided for under the Act or the Rules;

4. In view of above facts, the only issue which is to be decided by this Court is as to whether the respondent Authority can issue show-cause notice for assessment / export, after a period of six/ten years ?

5. Rule. Learned advocate Mr. Raval would waive service of notice of rule on behalf of respondent Authorities.

6. Learned advocate Mr.Dave for the petitioners has submitted that the respondent authority has issued a show-cause notice to the petitioner after a period of six/ten years, for the assessment / export of the year 2011 to 2015. He has submitted that it is a settle position of law that after a period of three years, the authority cannot issue any show-cause notice for the assessment /export period. He has replied upon the decision of this in the case of *M/s. S J S International versus Union of India – Special Civil Application No.20484 of 2019, dated 09.12.2021* and has submitted that this Court has decided this issue in detail and held that the authority cannot be issue any show-cause notice for assessment / export period which is beyond three years.

He has submitted that in the present case, the respondent authority has issued the show-cause notices after a period of six / ten years to the petitioners for the assessment / export period, which is not permissible under the law. He has submitted this these petitions may be allowed.

7. Learned senior standing counsel Mr. Nikunt Raval for the respondent Authorities has vehemently opposed these petitions. However, he has fairly submitted that the issue involved in this group of petitions is squarely covered by the decision of this Court rendered in *M/s. S J S International (supra)*. He has submitted that appropriate order may be passed.

8. Except the main issue, as noted above, there are other contentions and grievances raised by the learned advocate for the petitioners in this group of petitions, but since there is no dispute with regard to the proposition laid down by this Court in case of M/s. S J S International (supra), which is accepted by the other side, learned advocate for the petitioners, under instructions, does not press other contentions at this stage, keeping his right open qua those contentions / grievances and therefore, the same are not dealt

with by this Court here. It would be open for the either party to raise and/or rebut the other contentions / grievances before appropriate authority / forum / Court, in accordance with law.

9. In that view of the matter, this Court need to travel beyond the main issue as to whether the respondent Authority can issue show-cause notice after a period of six/ten years for assessment / export.

10. Under these circumstances, it is necessary to take into consideration the period of export / assessment, date of show cause notice and period after which notices are issued, which are as under :

Sr. No.	Special Civil Application Number	Period of Assessment / Export	Date of SCN	Period after which SCN issued
1	7165/2021	2011 to 2015	16.03.2021 01.04.2021 01.04.2021 20.05.2021	6 to 10 years
2	8600/2021	01/01/2014 to 31/12/2014	09/04/2021	7 years
3	8689/2021	2014 to 2015	05/05/2021	6 years
4	10699/2021	2011 to 2016	24/03/2021	5 to 10 years

11. Considering the above undisputed facts, the issue

is in very narrow compass. This Court had an occasion to deal with the identical issue in the case of M/s. S J S International (supra) and held that the authority cannot be issue show-cause notice after a period of three years for assessment / export. The relevant observations are as under :

> *" 7. Taking firstly the aspect of jurisdiction as contended before this Court, the SCN has been issued on 09.02.2018 by the Additional Commissioner of Customs, Customs Commissionerate, Mundra. Since the goods were exported from Mundra Port vide various shipping bills filed with Mundra Customs House, therefore, the jurisdiction would come of the office of the Principal Commissioner of Customs, Mundra and the notices have been issued by the proper officer as per the monetary limit fixed by Central Board of Indirect Taxes and Customs. The reliance is placed on the decision of the Madras High Court rendered in case of* ***K.P. ABDUL MAJEED VS. COLLECTOR OF CUSTOMS & CENTRAL EXCISE, COCHIN [1995 (80) E.L.T. 35 (MADRAS)]*** *wherein it is held that if a cause of action has arisen in the territorial jurisdiction of the Commissionerate, the jurisdictional Commissioner can investigate and adjudicate the matter.*
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> *7.1 So far as the Rule 16 of the Drawback Rules is concerned, it provides the recovery of payment of drawback and it also permits the initiation of recovery proceedings under Section 142 of the Act.*
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> *7.2 Here, the challenge essentially is of having initiated the proceedings in relation to the goods, which have already been exported and there were serious questions raised of misdeclaration in terms of quality, value and wrong classification. This confiscation has*

been made in terms of Sections 113 (1) and Section 113(2) of the Act read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1962.

7.3 Under the shipping bills No.6982039 dated 01.01.2015 and 6982047 dated 01.01.2015, some of the goods were allegedly misdeclared in terms of quantity/ weight and the classification of the goods. The search of the premise of M/s.SJS International, Jalandhar under the Panchnama dated 20.10.2015 had been conducted and the electronic devices and documents were retrieved from the office of the petitioner. The DRI, Ludhiana examined the same and also recorded the statement of Mr.S.K.Chaudhary. The Order-in-Original indicated that there were parallel invoices to overvalue the shipping bills for availing drawback fraudulently by producing the overvalued invoices to the department of Customs at the time of export.

7.4 Act would be to refer to Rule 16 of the Drawback Rules, at this stage, which speaks of repayment of erroneous or excess payment of drawback and interest.

> *"Rule 16. Repayment of erroneous or excess payment of drawback and interest. - Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962."*

7.5 It is quite clear from the said Rule that any amount of drawback and interest when paid erroneously or is paid in excess of the entitlement of the claimant, on demand by a proper officer of the Customs, the claimant is required to repay the amount paid erroneously or in excess. Rule 16 of the Drawback Rules provides for recovery of an amount of

drawback and interest paid erroneously or in excess of what the claimant is entitled to, on demand by a proper officer of the customs the same shall need to be repaid. And, where he fails to repay the amount, it is permitted to be recovered in the manner provided under Sub-section (1) of Section 142 of the Act. It is quite clear from Rule 16 of the Drawback Rules that what all it provides for is the recovery of excess drawback paid erroneously, but choses not to prescribe the time limit. The question which has come up for consideration as to whether in absence of any period of limitation provided under Rule 16 of the Drawback Rules, any reasonable time period could be read into the said Rule. It also provides for statutory mechanism of recovery under Section 142 of the Act.

8. This Court in Special Civil Application No.2039 of 2004 and allied matters needed to consider the very issue where the petitioners before the Court had challenged the order passed by the Revisional Authority which had held that the drawback paid erroneously to the petitioners was liable to be recovered. After a period of more than three years since the disbursement of the Drawback, SCNs came to be issued to each of the petitioners proposing to recover from them the differential amount of drawback erroneously paid to them under section 142 of the Customs Act read with Rule 16 of the Drawback Rules on the ground that the drawback should have been paid at the rate of 17% by taking into account the maximum limit of Rs.62 per kg. The adjudicating authority had held that it was inherent in the scheme that the drawback could not exceed the maximum of Rs.62 per kg fixed for a particular serial number.

9. However, on limitation, it was held that there is no provision prescribing any specific time for issuance of SCN for recovery of excess drawback paid by the Department under Rule 16 of the Drawback Rules.

9.1 This was carried in appeal before the Commissioner

(Appeals), who by a common order dated 29.6.2000, allowed the appeals and thereafter, the revenue approached the revisional authority in the Government of India, which also allowed the same. On the question of time limit for recovery of drawback, the revisional authority also held that the Drawback Rules are a self contained set of Rules made under section 75 of the Act and there is no time limit for issuance of demand notice for recovery of drawback paid erroneously or in excess under Rule 16 of the Drawback Rules.

9.2 The matter came up before this Court, where it firstly directed the review before the Revisional Authority and thereafter once again, when the petitioner approached before this Court, the Court held thus:

> *"16. In the light of the facts and contentions noted hereinabove, the sole question that arises for consideration in this group of petitions is as to whether the concept of reasonable period is required to be read into rule 16 of the Drawback Rules which does not prescribed any period of limitation for recovery of drawback erroneously paid.*
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> *17. As noticed earlier, the drawback claims in all these petitions relate to the period between December 1995 to 1996, in relation to which, show cause notices came to be issued in February 2000. Thus, in all the cases, drawback claims had been processed and cleared before issuance of the clarification vide letter dated 20th September 1996 by the Commissioner (Drawback) with the approval of the Chairman of CBEC. On a close reading of the said letter, it is apparent that the same envisages finalization of pending drawback clai s in the light of the clarification issued therein, namely, that the maximum ceiling has to be inferred even in cases where goods are not exported under AR4 and/or exporter is unable to furnish the certificate as required under condition (b) of the Note to SS No.5404 (1) in respect of which drawback is payable at the rate of 17% of the FOB value. Thus, while issuing the initial clarification on 20th September 1996, the instructions issued by the CBEC were to the effect that the same should be applicable only to pending drawback claims. Subsequently, by the clarification issued vide letter dated 19th August 1999, CBEC clarified that the earlier clarification of 20th September 1996 was operative from the date of issuance of the original notification and was not only prospective. It appears that it is only pursuant to the subsequent letter dated 19th August 1999, that the show cause notices have been issued in February 2000. Thus,*

though the Customs Authorities were well aware about the clarification in respect of the drawback paid on goods falling under condition (c) of the Note below sub-serial No.5404 (1) of the Schedule, no action was taken at the relevant time to recover the drawback paid to the petitioner beyond the ceiling limit provided thereunder. It is only in February 2000, after a period of more than three years that by issuance of show cause notices, differential amount of drawback was sought to be recovered from the petitioners. The revisional authority in the earlier order dated 28th June, 2002 has held that the Drawback Rules do not provide for any time limit and as such there is no time limit for issue of demand notice for recovery of drawback paid erroneously or in excess under rule 16 of the Rules.

18. Rule 16 of the Drawback Rules provides that where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs, repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub section (1) of section 142 of the Customs Act, 1962. Thus, apparently rule 16 of the Rules does not provide for any time limit for making recovery of excess drawback paid erroneously. The question, therefore, is when rule 16 does not prescribe any period of limitation, whether action can be taken thereunder after any length of time, or whether the concept of reasonable period has to be read into it. In this regard, it is by now well settled by the Supreme Court in a catena of decisions that if the statute does not prescribe any period of limitation, the power thereunder has to be exercised within a reasonable time. What would be a reasonable period would, of course, depend upon the facts of each case.

19. In Government of India v. Citedal Fine Pharmaceuticals, Madras (supra), the Supreme Court has, in the context of rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules 1956, which did not provide for any period of limitation, held thus:

> *"6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of*

any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised. it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

20. In Collector of Central Excise, Jaipur v. M/s.Raghuvar (India) Ltd. (supra), the Supreme Court held that any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period.

21. In Torrent Laboratories Pvt. Ltd v. Union of India (supra), a Division Bench of this Court in the context of rule 57-I of the Central Excise Rules, 1944 held that in absence of any provision with regard to specific period of limitation, reasonable period of limitation has to be read into the rule.

22. Thus, it is a settled legal proposition that where a statutory provision does not prescribe any period of limitation for exercise of power thereunder, a reasonable period has to be read therein. As to what is a reasonable period would depend upon the facts of each case.

23. Examining the facts of the present cases in the light of the aforesaid legal position, in all these cases, drawback had been paid to the petitioners between December 1995 and August 1996. Thereafter, despite a clarification having been issued as regards the interpretation of condition (c) of the Note under SS No.5404(1)(i) of the Drawback Schedule, no action was taken by the concerned authorities at the relevant time. It is only after a period of more than three years that show cause notices came to be issued to the petitioners seeking to recover the differential amount of drawback erroneously paid to them. Judging the period of delay from the armchair of a reasonable man, under no circumstances can the period of more than three years be termed to be a reasonable period for recovery of the amount erroneously paid. As held by the Supreme Court in the case of Collector of Central Excise, Jaipur v.

M/s.Raghuvar (India) Ltd. (supra), where no period of limitation is prescribed, the courts may always hold that any such exercise of powers which has the effect of disturbing the rights of citizen should be exercised within a reasonable period of time. In the present case, the drawback had been paid more than three years prior to the issuance of the show cause notices, and despite the fact that clarification in respect of condition (c) of the Note under SS No.5404(1)(i) of the Schedule had been issued way back in the year 1996, no efforts were made to recover the drawback paid to the petitioners at the relevant time. Thus, the petitioners were entitled to form a belief that the matter has attained finality and arrange their finances accordingly. Now, when after a period of more than three years has elapsed, if the respondents seek to recover the amount of drawback paid, it cannot be gainsaid that such exercise of powers would have the effect of disturbing their rights. Under the circumstances, reading in the concept of reasonable period in rule 16 of the Rules, this court is of the view that the show cause notices in question were clearly time barred.

24. Insofar as the decision of this court in the case of Dadri Inorganics Pvt. Ltd v. Commissioner of Customs (supra) on which reliance has been placed by the learned counsel for the respondents is concerned, a perusal of the said decision indicates that the said case fell within the ambit of willful misstatement or suppression of fact as envisaged under the proviso to section 28 of the Customs Act. It is, therefore, in the light of the peculiar facts of the said case that the court had held that the contention that the extended period of limitation could not be invoked was misconceived. The decision cannot be said to be laying down any absolute proposition of law to the effect that since rule 16 of the Drawback Rules does not provide for any limitation for recovery of amount of drawback erroneously paid, such powers can be exercised at any point of time, even beyond a reasonable period.

25. As regards the submission advanced by the learned counsel for the respondent that since in the review application, the petitioners had not raised the contention as regards limitation, the petitioners are now prohibited from raising the same in these petitions, it may be noted that in the earlier order dated 28 th June 2002, passed by the Government of India, the issue on merits, namely, applicability or otherwise of the maximum ceiling to the goods falling under condition (c) of the Note under SS No.5404(1)(i) of the Schedule had not been decided inasmuch as in para 12 of the said order, the revisional authority observed that the issues were already decided by the Government in the interim order. The sole issue that was decided by the revisional authority in the said order was on the question of time limit for recovery of drawback. When

the petitioners challenged the said decision before this court, the petitions were withdrawn with a view to file review applications before the revisional authority on the merits of the applicability of the maximum ceiling of Rs.62/- in cases falling under condition (c) of the Note under SS No.5404(1) (i) of the Drawback Schedule, on the ground that the revisional authority had not considered the said aspect and had laid emphasis on the limitation aspect of the matter. Thus, it is apparent that since in the earlier order, the revisional authority had considered the aspect of limitation only, review applications came to be filed before the revisional authority inviting a decision on merits as regards the applicability of the maximum ceiling to the cases of the petitioners. Viewed in the aforesaid context, the contention that as the question of limitation had not been raised before the revisional authority in the review applications, the petitioners are debarred from raising such contention before this court in these petitions deserves to be stated only to be rejected.

26. *In the light of the aforesaid discussion, in the opinion of this court, though rule 16 of the Drawback Rules does not provide for any period of limitation, a reasonable period has to be read into the said rule. As observed hereinabove, in the facts of the present case, the show cause notices which have been issued after a period of more than three years from the date when the drawback came to be paid to the petitioners, cannot by any stretch of imagination be said to have been issued within a reasonable period of time. Under the circumstances, the show cause notices have to be held to be bad on the ground of being time barred. Once the show cause notices are held to be invalid, the very substratum of all the orders passed pursuant thereto, including the impugned orders would fall, rendering the same unsustainable."*

9.3 This decision has also been followed in case of ***PADMINI EXPORTS & 1 vs UNION OF INDIA & 2*** *in Special Civil Application No.17812 of 2003.*

9.4 It is apt to note that these are binding precedents from 2012. The authority concerned ought to have followed the same when the same have attained finality.

9.5 In Special Civil Application No.14917 of 2013 to 14921 of 2013 this Court (Coram: Justice M.R.Shah, as His Lordship then was & Justice Sonia Gokani) in case of ***E I DUPONT INDIA PRIVATE LIMITED & 1 vs UNION OF INDIA & 3.*** *had noticed the case of* ***Commissioner of***

Central Excise and Customs vs. NBM Industries, *reported in* ***2013(29) STR (208) Gujarat*** *wherein it had been held that on inputs used in manufacturing of goods cleared by DTA units to 100% Export Oriented Unit (EOU), refund of CENVAT credit is available and the same cannot be denied on the ground that the case was of deemed export. It was insisted that the refund would be granted only in case of physical export. This Court disapproved non following of a binding decision and despite the direction of this Court, the respondent had rejected the refund claims of the claimant on the ground that the decision of NBM Industries (supra) is the case of another assessee and not in the case of claimant and each one must fight its own battle and must succeed or fail in such proceedings. It also had relied on the decision of the Madras High Court reported in* ***2007(211) ELT 23 (Madras)*** *which was against the assessee.*

9.6 This Court taking note of various decisions had directed that the action of the rejection of refund claim cannot be sustained and deserve to be quashed and set aside. While parting, the Court in very strong words disapproved the arbitrary act on the part of the lower adjudicating authority and in ignoring the binding precedents. Apt would be to refer to those words:

> *"[6.0] In view of the above and for the reasons stated above and the decision of this Court in the case of NBM Industries (Supra), the impugned orders passed by the respondent No.4 rejecting the refund claims of the petitioner cannot be sustained and they deserve to be quashed and set aside and are accordingly quashed and set aside and the respondents – adjudicating authorities are hereby directed to sanction the respective refund claims of the claimant after following the law laid down by this Court in the case of NBM Industries (Supra) and pass fresh orders within a period of two months from the date of the receipt of the present order and to make the actual payment within a period of four weeks thereafter and also grant consequential reliefs which may be available to the petitioners under the relevant provision of the rules more particularly Rule 5 of the Rules.*
>
> *[6.1] Before parting with the present order, we are constrained to strongly disapprove such*

arbitrary act on the part of the lower adjudicating authority and/or lower authorities in ignoring the binding decisions/orders passed by the higher appellate authorities/courts. Time and again the Hon'ble Supreme Court as well as various High Courts and this Court have disapproved such conduct/act on the part of the lower authorities in ignoring the binding decisions/orders passed by the higher appellate authorities/courts. Still it appears that message has not reached the concerned authorities. In the recent decision in the case of Claris Lifesciences Ltd. (Supra) in para 26 this Court has observed as under :

> *"26. Despite such clear and specific directions and authoritative pronouncements, act of issuance of show cause notice by the Deputy Commissioner is wholly impermissible and unpalatable and deserves to be quashed and struck down with a specific note of strong disapproval. The respondents simply could not have exercised the powers contained under the statute in such arbitrary exercise and in complete disregard to the pronouncement of this Court particularly reminding the Revenue authorities of the binding effect of decision of Tribunal on the identical question of law. This not only led to multiplicity of proceedings but also speaks of disregard to the direction of this Court rendered in the earlier petition of this very petitioner. Resultantly, petition stands allowed. Both the show cause notices dated 21.8.2012 and 22.1.2013 are quashed and struck down."*

It appears that still the message has not reached the concerned authorities in following the binding decisions of the higher appellate authorities and/or courts solely on the ground that the same is in the case of another assessee. Such a conduct is also required to be viewed from another angle. This would not only amount to disregarding the direction of the court rendered in earlier petitions but would also lead to multiplicity of proceedings. When the courts are overburdened and are accused of arrears, it is the duty of the concerned authorities to avoid multiplicity of proceedings and lessen the burden of the courts. Being a part of the justice delivery system. All efforts should be made by the authorities/quasi judicial authorities and judicial authorities to see that there is no multiplicity of

proceedings and to pass the orders considering the binding decisions. It would also avoid unnecessary harassment to the parties as well as the unnecessary expenditure.

[6.2] As observed hereinabove despite clear and unequivocal message by the pronouncement of the decisions by the Hon'ble Supreme Court as well as this Court, the message has not reached to the concerned authorities, we direct respondent No.2 – Central Board Excise and Customs, New Delhi to issue a detailed circular to all the adjudicating authorities considering the observations made by this Court in the present judgment and order as well as the law laid down by the Hon'ble Supreme Court in various decisions referred to in the present judgment and order, within a period of 30 days from the date of receipt of the present order so that such eventuality may not happen again and again."

13. The petitioner has approached this Court as the actions have been taken of issuance of the SCN in relation to the search made on 10.01.2015, the SCN has been issued on 09.02.2018. It is thus clear that for the export which had been made in the years 2011 to 2015 and for the shipping Bills of 01.01.2015 for which the duty drawback had been given to the petitioner in the year 2016, this action has been initiated before expiry of a period of three years so far as some bills are concerned. As held by this Court in case of ***PRATIBHA SYNTEX LIMITED vs. UNION OF INDIA & OTHERS****, Rule 16 of the Drawback Rules though does not provide for the period of limitation, the reasonable period of limitation has to be read into the same and the SCN issued before expiry of a period of three years from the date of payment of the drawback to the petitioner cannot provide a reason for the Court to hold that the same as time barred.*

14. The petitioners have shown the procedure for export of goods. It is a detailed procedure to urge that the petitioners have exported the goods following the procedure upon the export permitted by the proper officer and the final shipping

bills being generated, the petitioners were entitled to duty drawback as the shipping bills were filed through EDI system. Under the EDI system, once the final shipping bill is generated, the same becomes the final claim for the duty drawback according to the petitioner and the same needs to be paid within three working days as per the Circular No.25 of 2000 of the department.

16. As held above in case of those shipping bills as the show cause notice essentially cannot be issued beyond the period of three years of payment of the duty drawback, and that being a settled legal position, if not regarded, this Court needs to interfere. Again, the proper officer who assesses the shipping bills will be in a position to reopen the same provided that there is such a stage of reopening the shipping bill filed once are self assessed, that would attain finality upon the proper officer clearing the same. Had there been any discrepancy, the proper officer would not consider the self assessment final and would obviously assess the shipping bill before finalizing.

20. Resultantly, this petition is allowed partly. The action of the respondent authority of issuance of the SCN dated 09.02.2018 is interfered with. The SCN in the present form is quashed and set aside with all consequential actions with a clarification that for the shipping bills not covered by the decision of ***PRATIBHA SYNTEX LIMITED (supra),*** *the authority shall be permitted to proceed if allowed otherwise under the law."*

12. Thus, when the issue is covered as per the decision of this Court as noted above in the case of M/s. S J S International (supra), we allow all these petitions accordingly, quashing and setting aside the impugned show-cause notices issued by the respondent authorities, which are

admittedly beyond the period of three years. Since the impugned show-cause notices are quashed by this Court, the consequent action of the respondent authorities qua those show-cause notices are also quashed.

13. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

Sd/-
(SONIA GOKANI,CJ)

Sd/-
(SANDEEP N. BHATT,J)

M.H. DAVE