



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No.2039 of 2004
To
SPECIAL CIVIL APPLICATION No.2044 of 2004
With
SPECIAL CIVIL APPLICATION No.1508 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS.JUSTICE HARSHA DEVANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
- 2 To be referred to the Reporter or not?
- 3 Whether their Lordships wish to see the fair copy of the judgment?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?
- 5 Whether it is to be circulated to the civil judge?

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PRATIBHA SYNTEX LIMITED - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance:

MR PARESH M DAVE for Petitioner(s) : 1 - 2.
MR RJ OZA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date: 04/07/2012

ORAL JUDGMENT

(Per: HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Since the controversy involved in all these petitions is common and the facts are also common, the same were taken up for hearing together and are disposed of by this common judgment.

2. In each of the petitions, the petitioners have challenged the order passed by the Government of India (hereinafter referred to as “the revisional authority”) allowing the revision preferred by the Revenue and holding that the drawback paid erroneously to the petitioners is liable to be recovered. For the sake of convenience, reference is made to the facts as stated in Special Civil Application No.2039 of 2004.

3. The petitioners are Government recognized export houses, inter alia, engaged in the business of export of fabrics made from 100% polyester filament yarn. Under the Drawback Rules framed by the Government in exercise of powers under section 75 of the Customs Act, 1962 (hereinafter referred to as “the Act”) and section 37 of the Central Excise Act, 1944, the Central Government is given power to fix rates at which drawback would be allowed to exporters of specified goods. The Schedule to the Drawback Rules provides for classification of goods specified for allowing drawback. Sub Serial No.54.04 of the Drawback Schedule covered goods of the description “all fabrics including sarees, dhotis and odhanies made of man-made staple fibers and filament yarn”. The goods exported are covered under Sub Serial No.5404 of the Drawback Schedule

and as such the petitioners in each of the petitions were eligible for drawback thereunder. Initially, under the Drawback Schedule in respect of goods falling under Sub Serial No.5404, drawback was payable at the rate of 20% of FOB value subject to maximum of Rs.62 per kg of filament yarn content. The said Schedule was published vide Public Notice dated 15.6.1995 which contained conditions (a) and (b). Subsequently, with effect from 1st August 1995, clause (c) came to be added in column 3 of the Schedule. Sub-serial No.5404 of the Drawback Schedule along with Note thereunder specifying the conditions subject to which the rates against the said sub serial number would apply reads as under:

5404 2605	<i>(1) All fabrics including 20% (Twenty per cent only) of FOB value, subject to made, staple fibers and a maximum filament yarn</i> <i>Rs.62.00</i> <i>(Rs.Sixty two</i> <i>(i) Made with 100% only) per kg of polyester filament yarn. filament yarn content</i>
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“Note: The rate against above S.S.No.5404 shall apply subject to the following conditions:-

(a) The denier of such polyester filament yarn is less than 750 and its tenacity does not exceed 6.5 gram per Denier.

(b) The goods are exported under AR4 and a certification is made in its by the Superintendent of Central Excise/Customs that polyester filament yarn used in the export product have paid the appropriate rate of Central Excise duty of the additional Customs duty (as the case may be) effective from 1.4.1995, i.e. at the rate of Basic Excise duty 50% (fifty per cent only) ad valorem plus 15% (fifteen per cent only) additional duties on Textiles.

**(c) If the goods are not exported under AR-4 and/or exporter is unable to give the certificate as required under (b) above, reduced rate of drawback 17% (Seventeen per cent only) of f.o.b. value shall be payable on the exporters goods.*

<i>(ii) Others</i>	<i>17% (Seventeen per cent only) of fob value</i>	<i>All C.Ex.</i>
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** added vide PN No.7/95 dated 1.8.95"*

Thus, in terms of the Drawback Schedule, initially the goods falling under sub-serial No.5404(1)(i) which satisfied the requirements of condition (b) of the Schedule were entitled to drawback of 20% subject to a maximum of Rs.62 per kg of filament yarn content. Subsequently, with the insertion of condition (c), even those goods which did not satisfy the requirements of condition (b) were covered under the said sub serial and were entitled to a reduced rate of drawback at 17%. The petitioners in all these petitions claimed drawback at the rate of 17% FOB value because they did not satisfy condition (b) as contained in the original Schedule. The claims submitted by the petitioners were scrutinized and verified and thereafter sanctioned by the Deputy Commissioner of Customs at the rate of 17% of FOB value of the exported goods. At the relevant time, it appears that there was some confusion prevailing as regards the applicability of condition (c), namely, as to whether the maximum ceiling of Rs.62 per kg of filament yarn content was applicable to the goods falling under condition (c) to the Schedule. It appears that the authorities at the relevant time had interpreted the Schedule to mean that insofar as the goods

falling under condition (c) are concerned, no maximum ceiling had been imposed. Accordingly, the petitioners had been paid drawback at the rate of 17% without any maximum ceiling.

4. Subsequently, by a letter dated 20th September 1996, the Commissioner (Drawback) clarified that the rate mentioned against heading S.S.No.5404 (1)(i) would read as "17% (seventeen percent only) of the FOB value subject to a maximum of Rs.62 (Rupees sixty two only) per kg. of filament yarn content". It was further clarified that pending drawback claims may be finalised in the light of such clarification. It may be noted that the said letter which was circulated to all Chief Commissioners of Customs/Commissioners of Central Excise/ and Commissioner of Customs (Preventive) was issued with the approval of the Chairman, C.B.E.C. Subsequently, by a letter dated 19th August, 1999 the Joint Secretary (DBK) clarified that clarification dated 20.9.1996 merely explained the scope of an already existing provision and has not laid down any new rule/provision. Therefore, the clarification was operative from the date of issuance of the original notification and thus could not be only prospective. By a letter dated 22.01.1997, the Commissioner, Custom Preventive Collectorate, stated that it had been reported by the Asstt. Commissioner of Customs in Surat that Duty Drawback of 17% without any maximum ceiling was disbursed by him till 1.8.1996. However, in view of the clarification on maximum ceiling vide letter dated 20.9.1996, the differential amount already disbursed is recoverable, as the clarification now is in contradiction with the earlier clarification vide letter 10.4.1996 that ceiling can be applied for pending claims of drawback. He, accordingly, sought clarification as to whether the recovery is to be made in respect of claims

finalized by applying clarification vide letter dated 20.9.1996 retrospectively. In response to the said letter, the Commissioner – Drawback by a letter dated 4th March, 1997 replied that in paragraph 3 of the clarification dated 20.9.1996 it has been specifically stated that the pending drawback claims should be finalised in light of this clarification. Therefore action has to be taken in the light of the said clarification wherever necessary.

5. Thereafter, after a period of more than three years since the disbursement of the Drawback, separate show cause notices came to be issued in February, 2000 to each of the petitioners proposing to recover from them the differential amount of drawback erroneously paid to them under section 142 of the 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 show cause notice culminated into orders-in-original, whereby the adjudicating authority held that the Joint Secretary (DBK) vide letter dated 20.9.96 and further clarification dated 19.8.1999 had clarified that it was inherent in the scheme that the drawback could not exceed the maximum of Rs.62 per kg fixed for sub serial No.5404(1)(i). On the question of limitation, it was held that there is no provision prescribing any specific time for issuance of show cause notice for recovery of excess drawback paid by the Department under rule 16 of the Customs and Central Excise Duty Drawback Rules, 1995 (hereinafter referred to as “the Drawback Rules”). Accordingly, the differential amount of drawback in excess of Rs.62/- erroneously paid to the petitioners came to be confirmed.

6. Each of the petitioners carried the matter in appeal before the Commissioner (Appeals), who by a common order dated 29.6.2000, allowed the appeals. On merits the Commissioner (Appeals) held in favour of the petitioners by holding that in case of export already made, as in the present appeal, there was no intention on the part of the Government to apply the maximum ceiling limit. On the question of limitation, it was held that the show cause notice had been issued after two to three years of sanctioning of drawback claims of the petitioners, without alleging suppression of facts, fraud or willful misstatement and therefore, the show cause notices are time barred. That though there is no time limit fixed under rule 16 of the Drawback Rules, a reasonable period of six months would apply as per section 28 of the Customs Act, 1962. While holding so, the Commissioner (Appeals) placed reliance was placed upon a decision of the Tribunal in the case of *CCE Coimbatore v. Chemicals & Plastics Ltd.*, for the proposition that when no period of limitation has been prescribed, a reasonable period of limitation has to be read into the provision.

7. Against the common order passed by the Commissioner (Appeals), revenue went in revision before the Government of India. In the revision proceedings, initially an interim order dated 30.3.2001 came to be made whereby the revisional authority after discussing the merits of the case observed that since the matter is sub-judice, the applications are consigned to call-book to be taken up after finalization of the petitions before the High Court. Subsequently, by a common order dated 28.6.2002, the revision came to be

allowed. However, it appears that at the relevant time the sole issue which came to be decided by the revisional authority was on the question of time limit for recovery of drawback. The revisional authority held that the Drawback Rules are a self-contained set of rules made under section 75 of the Customs Act and are specifically provided to deal with various aspects of drawback. The revisional authority was of the opinion that 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, made under section 75 of the Act.

8. Being aggrieved by the order passed by the revisional authority, the petitioners carried the matter before this Court by way of writ petitions being Special Civil Application No.12084 of 2002 and other cognate matters. The said petitions came to be disposed of by a common order dated 31st January 2003, with a view to enable the petitioners to move review applications before the revisional authority, in the light of the submissions made by the learned advocate for the petitioners that the revisional authority had not considered the submission that under SS No.5404(1)(i) of the Drawback Schedule, for the category where the goods are not exported under AR4 and/or exporter is unable to give the certificate as required under condition (b) of item (i) of the Note below the said sub-serial number, the rate of drawback was declared as 17% of the FOB value and there was no cap of Rs.62 per kg thereunder and that the revisional authority had laid emphasis on the limitation aspects of the matter while deciding the revision application.

9. Pursuant to the aforesaid order the petitioner filed

review applications before the revisional authority, who by an order dated 31.12.2003 rejected the review applications, giving rise to the present petitions wherein both the order dated 28.6.2002 as well as the order dated 31.12.2003 passed by the revisional authority are subject matter of challenge.

10. On 19th April 2004, this Court while issuing rule had, inter alia, observed thus:

“5. While we do find some substance in the submission of the learned Senior Standing Counsel on merits of the controversy that the cap of Rs.62 per kg. on filament yarn content was applicable to all the notes under entry 5404(1)(i), in the present group of petitions, we are only concerned with the question whether the power under Rule 16 of the Duty Drawback Rules, 1995 was required to be exercised within reasonable time.”

11. Thus, by virtue of the aforesaid order, this court had limited the scope of the petition to the question as to whether the power under rule 16 of the Drawback Rules was required to be exercised within reasonable time. The learned counsel for the petitioner, has, therefore, restricted his submissions to the said issue.

12. Mr. Paresh Dave, learned counsel for the petitioners invited attention to the sub-serial No.5404 (1) of the Drawback Schedule to submit that condition (c) thereunder made provision for reduced rate of drawback at 17% of FOB value if the goods are not exported under AR-4 and/or the exporter is

unable to give the certificate as required under condition (b). The said condition did not provide for a maximum cap of Rs.62 per kg as in the case of goods covered under condition (b). Reference was made to the letter dated 20th September 1996, to submit that initially the authorities had also understood the conditions in the Drawback Schedule to mean that in case of goods were not exported under AR4 and certification as required under condition (b) was not made by the Superintendent of Central Excise/Customs, a reduced rate of drawback of 17% of the FOB value shall be payable on the exported goods without any maximum ceiling. However, subsequently, a clarification came to be issued on 20.9.1996 that the maximum ceiling of Rs.62.00 per kg filament yarn content would be applicable even to cases falling under condition (c) of the Schedule. It was pointed out that initially when such clarification came to be issued, it was stated that pending drawback claims may be finalized in the light of the clarification. In the present case, all the drawback claims had been made and allowed during the period between December 1995 and August 1996, which was prior to the issuance of the clarification dated 20.9.1996 and as such, insofar as the subject matter of the present petitions is concerned, there were no pending drawback claims at the time when the clarification came to be issued. It was pointed out that later on, by another letter dated 19th August, 1999 C.B.E.C. had clarified that the earlier clarification dated 20.9.1996 merely explained the scope of an already existing provision and that the clarification was operative from the date of issuance of the original notification and was not only prospective. Much, thereafter, in February 2002, show cause notices came to be issued to the petitioners seeking to recover the differential

amount of drawback.

13. It was submitted that right from 1996 till 1999, that is from the time when the initial clarification dated 20.9.1996 came to be issued till the subsequent clarification came to be issued by the C.B.E.C. by a letter dated 19.8.1999 to the effect that the clarification dated 20.9.1996 would be operative from the date of issuance of the original notification, the respondent authorities had accepted that the clarification would apply to pending drawback cases only. Now, after a delay of more than three years since the drawback came to be paid to the petitioners by the show cause notices issued in February, 2000, the drawback is sought to be recovered from the petitioners.

14. It was emphatically argued that the show cause notices issued under rule 16 of the Drawback Rules were clearly time barred inasmuch as the same have been issued after a period of more than three years from the date when the drawback came to be paid to the petitioners. The correspondence exchanged between the Revenue Officers inter-se shows that the officers were put to notice about the interpretation of the Drawback Schedule in September 1996 itself and yet the notices were issued only in the year 2000. It was submitted that though rule 16 of the Drawback Rules does not provide for any limitation, it is by now well settled that a reasonable period of limitation has to be read into the same. Thus, the time limit of six months or five years, as the case may be, as provided under section 28 of the Act, should be made applicable to such cases. In support of his submissions, the learned counsel placed reliance upon the decision of the Supreme Court in the case of **Government of India v.**

Citedal Fine Pharmaceuticals, Madras, AIR 1989 SC 1771, for the proposition that in the absence of any period of limitation, it is well settled that every authority is to exercise the power within a reasonable time. Reliance was also placed upon a decision of the Supreme Court in the case of ***Collector of Central Excise, Jaipur v. M/s.Raghuvar (India) Ltd.***, AIR 2000 SC 2027, and more particularly, paragraph 13 thereof. The decision of this Court in the case of ***Torrent Laboratories Pvt. Ltd. v. Union of India***, 1991 (55) E.L.T. 25 (Guj.), was cited for the proposition that in the absence of any provision with regard to specific period of limitation, reasonable period of limitation has to be read into the rule. It was submitted that in the light of the principles enunciated in the above referred decisions, the revisional authority was not justified in holding that there is no time for issue of demand notice for recovery of drawback paid erroneously under rule 16 of the Rules and that recovery can be made at any stage.

15. Vehemently opposing the petitions, Mr. R. J. Oza, learned Senior Standing Counsel for the respondents referred to rule 16 of the Drawback Rules to submit that the same does not provide for any period of limitation and as such, when the legislature has deliberately and consciously not provided for any limitation, there is no question of reading any limitation into such rule. It was pointed out that the revisional authority had initially by an order dated 28th June, 2002 allowed the revision filed by the Commissioner of Customs and had held that there is no time limit for issue of demand notice for recovery of drawback paid erroneously, against which the petitioners had preferred writ petitions before this Court being Special Civil Application Nos.12086 of 2002 and other cognate

matters. The said petitions came to be disposed of by this Court by permitting the petitioners to move review applications before the Government of India. It was submitted that in review, the sole ground raised by the petitioners was on the merits of the case, namely, that the maximum ceiling of Rs.62 per kg of filament yarn content would not be applicable to condition (c) of the Note under SS No.5404(1)(i) of the Schedule. However, no contention had been raised on the question of limitation. According to the learned counsel, the order passed by the Commissioner (Appeals), allowing the appeals of the petitioners stood merged with the earlier order dated 28th June 2002 passed by the revisional authority which in turn stood merged with the order dated 31st December 2003 passed on the Review Application. It was submitted that under the circumstances, it would be only the last order which would be in existence inasmuch as the earlier orders stood merged in the subsequent order. It was submitted that since in the ultimate order passed by the revisional authority, no ground as regards the bar of limitation has been urged, it is not permissible for the petitioners to contend that the demand of drawback is barred by limitation. In support of his submissions, the learned counsel placed reliance upon the decision of the Supreme Court in the case of **Kunhayammed v. State of Kerala**, 2001 (129) E.O.T. 11 (S.C.). Reliance was also placed upon the decision of a Division Bench of this Court in the case of **Dadri Inorganics Pvt. Ltd. v. Commissioner of Customs**, 2010 (260) E.L.T. 61 (Guj.) wherein the Court has observed that the Drawback Rules nowhere provide for any limitation for recovering any amount of drawback erroneously paid. It was submitted that under the circumstances, that contention that a reasonable period of limitation has to be read

into rule 16 of the Drawback Rules deserves to be rejected on this ground alone. It was, accordingly, urged that the petitions being devoid of merit deserve to be rejected.

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.

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 claims 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

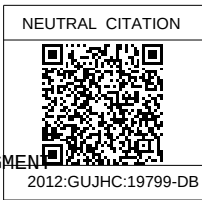
Dadri Inorganics Pvt. Ltd v. Commissioner of Customs

(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 28th 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.



27. For the foregoing reasons, the petitions succeed and are, accordingly, allowed. The impugned orders dated 28th June 2002 and 31st December 2003 passed by the Government of India are hereby quashed and set aside. Rule is made absolute accordingly in each of the petitions with no order as to costs.

(Akil Kureshi, J.)

(Harsha Devani, J.)

(vjn)