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Petitioner Vs. Development Commissioner, Falta Economic Zone and Ors.

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Court : Kolkata

Decided On : Sep-15-2017

Judge : Biswanath Somadder

Appellant : Petitioner

Respondent : Development Commissioner, Falta Economic Zone and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE Present : The Honble Mr.Justice Biswanath Somadder.

WP959of 2013 Kariwala Industries LimitedWrit Petitioner versus Development
Commissioner, Falta Economic Zone & ORS...Respondents For the Writ Petitioner
: Mr.J.P.

Khaitan, Senior Advocate, with Mr.Ashok Bose, Mr.Ajay Gaggar, Ms.Anupa
Banerjee, Mr.A.Guha, Mr.Agnibesh Sengupta, Ms.Rakhi Purnima Paul.Advocates
For the Respondents : Mr.Anup Mukhopadhyay, Advocate .for Union of India
Mr.Bhaskar Prasad Banerjee, Mr.Amitabrata Ray .Advocates for Commissioner of
CustoMs.Kolkata.

Mr.Alok Kumar Banerjee, Mr.P.K.

Das, Mr.Arunabha Sarkar.Advocates for RBI.

Heard on : 26.09.2014, 28.11.2014, 26.06.2015, 10.07.2015, 28.08.2015, 11.09.2015, 04.12.2015, 11.12.2015, 15.07.2016, 23.09.2016, 09.12.2016, 13.01.2017, 10.02.2017, 17.02.2017, 10.03.2017, 17.03.2017, 05.05.2017, 16.06.2017, & 28.07.2017.

Judgement on : 15.09.2017.

30.01.2015, 19.06.2015, 31.07.2015, 21.08.2015, 09.10.2015, 27.11.2015, 08.01.2016, 18.03.2016, 18.11.2016, 02.12.2016, 27.01.2017, 03.02.2017, 24.02.2017, 03.03.2017, 07.04.2017, 28.04.2017, 23.06.2017, 30.06.2017

Biswanath Somadder, J.

:The instant writ petition has been filed by M/S.Kariwala Industries Limited, a company incorporated under the Companies Act, 1956, praying, inter alia, for the following reliefs:(a) A writ of and/or order and/or direction in the nature of Mandamus commanding the respondents to forthwith withdraw, recall, cancel and/or rescind the said refusal of the respondent No.6 to allow the duty drawback claim filed by your petitioner, vide its order dated May 28, 2013, in respect of the export of goods in question and to act according to law.

(b) A writ of and/or order and/or direction in the nature of Prohibition prohibiting the respondents, their servants and agents from giving any effect to and/or taking any step whatsoever in pursuance of and/or under the said refusal of the respondent No.6 to allow the duty drawback claim filed by your petitioner, vide its order dated May 28, 2013 in respect of the export of goods in question and all the purported proceeding thereunder and/or relating thereto and/or in pursuance thereof so that the same may be quashed and/or set aside and conscionable justice might be rendered.

(c) A writ of and/or order and/or direction in the nature of Certiorari commanding the respondents, their servants and agents to transmit and certify the records relating to the said refusal of the respondent No.6 to allow the duty drawback claim filed by your petitioner, vide its order dated May 28, 2013 in respect of the export of goods in question and all the purported proceeding thereunder and/or relating thereto and/or in pursuance thereof so that the same may be quashed and/or set

aside and conscionable justice might be rendered. It is stated that the petitioner is primarily engaged in the production and export of industrial wear, beach wear, jute bags.

The petitioner set up two Units in the Falta Special Economic Zone (hereinafter referred to as FSEZ) for the purpose of manufacturing and producing such goods and thereafter exporting the same to various countries.

Vide letter dated July 28, 2005, the petitioner sought permission from the respondent no.1 to set up a third Unit at the FSEZ in order to manufacture jute bags, cotton bags, jute fabric and so on.

By a letter dated August 1, 2005 the respondent no.1 granted permission to M/S.Kariwala Green Bags as Unit-III of the writ petitioner company for setting up a Unit under the FSEZ scheme for manufacture and export of (1) jute bag, (2) cotton bag, (3) cotton pareo, (4) polyester pareo, (5) viscose pareo, (6) silk made up, (7) hat, (8) eva slipper, (9) jute fabric.

Incidentally, the fiRs.Unit of the petitioner was set up in terms of letter of permission dated November 19, 1992 and Unit-II was set up in terms of permission dated March 24, 2000.

It appears that the petitioner also has a Unit outside the zone within the domestic tariff area.

During the period April, 2008 to March, 2009, duty paid raw materials were transferred from the domestic tariff Units of the petitioner to its Unit-III, namely, Kariwala Green Bags, which is within the zone.

The petitioner has annexed specimen documents to the writ petition which demonstrates that receipt of such duty paid raw materials in Unit-III was contemporaneously verified by the customs officers in the zone.

In such documents, the particulars of the letter of permission mentioned was that of Unit-III.

The petitioner submitted duty drawback claim in respect of the exports made by it from the zone.

Such claims were made on the basis that finished goods were manufactured in and exported from Unit-III where duty paid raw materials were received.

However, because in the shipping bills, the name of the exporter was mentioned as Kariwala Industries Limited, the Customs Authority sought to take the view that the goods were manufactured and exported not from Unit-III, i.e., M/S.Kariwala Green Bags, but from other Unit of the petitioner within the zone.

The petitioners explanation that the shipping documents were in the corporate entitys name and that the particulars of the letter of permission mentioned therein identified the manufacturing-exporting Unit within the zone, viz., Unit-III M/S.Kariwala Green Bags, was not found acceptable.

It is specifically stated by the petitioner that the domestic tariff area Unit which had supplied the duty paid raw materials and the three Units within the zone all belong to the same corporate entity, i.e., Kariwala Industries Limited.

It is contended by the petitioner that as between different Units of the same corporate entity, there can be no sale or purchase involving receipt or payment of any consideration.

As the petitioner at that time had not opened any foreign currency account, in order to substantially comply with Rule 30(8) of the Special Economic Zone Rules, 2006 (hereinafter referred to as the said Rules).the petitioner had transferred in foreign currency, money equivalent to the value of the duty paid raw materials from its current accounts to which the foreign currency export proceeds of Unit-III were credited, to its current account used for the domestic tariff area Unit.

At the time of making such transfer, the bank debited the current account used for domestic tariff Unit converted the amount into foreign currency.

As a next step, the foreign currency was converted into Indian currency at the time to credit the same amount.

This is reflected from the banks letter dated June 6, 2011 which has been annexed to the writ petition and paragraphs 2(a) and (b) of the affidavit of Reserve Bank of India read with letter dated April 18, 2011 of State Bank of Bikaner and Jaipur addressed to the Superintendent of Customs. The other documents which have been referred to and relied upon by the petitioner in this regard are the letter dated May 14, 2011 of the Superintendent of Customs to Reserve Bank of India and the letter dated July 22, 2011 to the Superintendent of Customs as well as the letter dated July 9, 2011 of the State Bank of Bikaner and Jaipur to Reserve Bank of India.

By an order in original dated August 9, 2011, the Assistant Commissioner of Customs rejected the claim of drawback primarily on the following grounds : (i) M/S. Kariwala Green Bags, Falta Special Economic Zone and Kariwala Industries Ltd., Falta Special Economic Zone were not the same entity in the Zone.

(ii) The goods procured by M/S. Kariwala Green Bags cannot be termed as raw material for Kariwala Industries LTD. and there had been violation of rules 22(2) and 34 of the Rules.

The raw materials were procured by M/S. Kariwala Green Bags but the finished goods were manufactured and exported by Kariwala Industries LTD. (iii) Submission of shipping bills with the exporter as Kariwala Industries LTD. but with the particulars of letter of permission of M/S. Kariwala Green Bags was a misdeclaration of facts constituting violation of section 50(2) of the Customs Act, 1962.

(iv) Payment from current account by conversion into foreign currency was not in accordance with rule 30(8) of the Rules, which required payment from a foreign currency account and as such there had been violation of section 75 of the Customs Act, 1962. The petitioner thereafter preferred an appeal before the Commissioner of Customs (Appeals) who allowed the same by an order dated December 30, 2011.

The appellate authority accepted the contention of the writ petitioner that the different Units of the petitioner cannot be treated as different entities.

Upon coming to a finding that finished goods were manufactured in the zone from the duty paid raw materials and thereafter exported and that export proceeds had been realized, the Commissioner of Customs (Appeals) directed sanction of the drawback claim.

Consequently, the concerned respondent authorities preferred a revisional application in respect of the order dated December 30, 2011.

The concerned Joint Secretary reversed the order of the Commissioner of Customs (Appeals) and restored the order of the Assistant Commissioner of Customs holding, inter alia, as follows:(a) Rule 30(15) of the Rules permitted inter-unit transfer of materials subject to compliance of laid down procedure, violation of which can be treated as a procedural condonable lapse and not a reason to deny substantial benefit like drawback.

However, the petitioner had not produced the relevant records for verification by the Assistant Commissioner of Customs and in the absence of valid documentary evidence regarding proper maintenance of records for utilisation of materials, the claim of the petitioner cannot be accepted.

(b) Payment from a foreign currency account was a mandatory condition of rule 30(8) and payment in foreign currency from a current account did not satisfy the requirement of rule 30(8). This order dated May 28, 2013, is the subject matter of challenge in the instant writ petition.

The following two questions arise for consideration in the facts of the instant case:-

(i) Whether there was violation of Rules 22(2) and 34 of the Rules because according to the Customs Authorities, the duty paid raw materials were brought into one unit in the Zone but finished goods were manufactured and exported from another unit in the Zone?.

(ii) Whether there was violation of Rule 30(8) of the Rules because payment for the duty paid raw materials in foreign currency was made from a current account and not a foreign currency account?. Before proceeding to answer the two questions, it is necessary to advert to the case sought to be made out before this

Court on behalf of the respondent nos.3, 4 and 5, being the Customs Authorities.

It is contended on behalf of the said respondents that Kariwala Green Bags is a separate legal entity under the law and had submitted documents that they procured raw materials from the domestic tariff area Unit and had submitted claim for drawback.

Manufactured products were exported abroad by Kariwala Industries and not by Kariwala Green Bags.

At the time of export, Kariwala Industries used letter of permission dated August 1, 2005 of Kariwala Green Bags instead of Kariwala Industries and as such they are guilty of misdeclaration.

The shipping bills show that the manufacturing process has been undertaken by Kariwala Industries.

The writ petition has been filed challenging the decision of the respondent authorities by Kariwala Industries Limited and not by Kariwala Green Bags.

Kariwala Industries Limited and Kariwala Green Bags are separate companies having its independent entity.

Kariwala Green Bags had applied for drawback claim which was rejected by the order dated August 9, 2011.

The appeal was filed by Kariwala Green Bags before the Commissioner of Customs (Appeal).The revisional application was filed by the concerned respondent authority and Kariwala Green Bags was the respondent in the said revisional application.

The orders of the authorities have been challenged by Kariwala Industries Limited and not by Kariwala Green Bags.

Hence, the challenge is not maintainable at the instance of Kariwala Industries Limited who was not a party in the entire adjudication and the appellate proceeding.

The writ petition is, therefore, liable to be dismissed.

It is further contended on behalf of the respondent authorities that there are three Units in the FSEZ in the name of Kariwala having separate letters of permission, namely, (a) Kariwala Green Bags(Unit-III of Kariwala Industries Limited).(b) Kariwala Industries (Unit-II) and (c) Kariwala Industries.

As per the letters of undertaking, Kariwala Green Bags is the obligor and Kariwala Industries Limited is the surety.

The seal that was affixed on the documents bears the seal of Kariwala Green Bags and in the shipping bill that of Kariwala Industries.

By not maintaining separate accounts and intermingling accounts of different Units, it was not possible to take clear picture of the various restrictive obligations under the law.

It is also contended on behalf of the concerned respondent authorities that in order to submit the claim for drawback, the concerned Unit has to show export and, thus, foreign exchange earnings.

The word Unit is very important.

Hence in the absence of Kariwala Green Bags not undertaking the procedure established by law, the claim of Kariwala Green Bags cannot be granted and the challenged made at the instance of the writ petitioner, namely, Kariwala Industries Limited, is not maintainable in the eye of law.

It is further stated that records show that the exports were made by Kariwala Industries.

GR forms were submitted by Kariwala Industries for receiving foreign remittance, the foreign remittance earned by means of overseas export was received by Kariwala Industries and not by Kariwala Green Bags.

The documents reveal that Kariwala Green Bags did not undertake any export of goods.

Consequently, the drawback claim of Kariwala Green Bags is false since they are claiming drawback without undertaking any export.

Kariwala Industries received the foreign currency in their own accounts and as such Kariwala Industries cannot state that they can receive the foreign currency in respect of another Unit and channelize the said foreign currency in another Unit account.

In this regard, the respondent authorities have referred to the letter dated March 3, 2011 of Kariwala Green Bags wherein the company stated that the entire misunderstanding developed owing to unintentional clerical error simplicitor on their part and probable overlooking on the part of the department.

It is also contended that both from the technical as well as legal point of view, the drawback claim by Kariwala Green Bags cannot be sustained and the challenge made by Kariwala Industries Limited before this Court with regard to orders passed in respect of Kariwala Green Bags cannot be maintained since Kariwala Industries Limited was not a party to the proceeding.

The respondent authorities have referred to section 147(1)(b) of the Companies Act, which provides that every company shall have its name engraven and in legible characters on its seal.

The seal is the identity and signature of the concerned company and it is submitted on behalf of the respondent authorities that the argument of the writ petitioner that Kariwala Industries and Kariwala Green Bags are the same company and that intermingling of accounts or remittance of foreign exchange is permissible, cannot be sustained in view of the fact that both the companies have independent identity as per the provisions of the Companies Act.

The respondent authorities have referred to Rule 22(iv)(a) of the said Rules which states that That the bond cum legal undertaking shall be affixed with the common seal of the company. According to the respondent authorities, as per provision of the said Rule, there is no concept of group companies and the same is limited to a single company.

The respondent authorities have also referred to Rules 34 and 22 (2) of the said Rules in order to contend that every unit and developer shall maintain proper accounts, financial year wise and such accounts should clearly indicate in value terms the goods imported or procured from the domestic tariff area provided that the unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing activities.

The word Unit according to the respondent authorities is very important since the law provides that the unit has to comply with the obligations for being under the purview of the SEZ and once the unit has accepted the provisions of the SEZ Act, the consequences of not following the statutory provisions has to be suffered by the said unit.

The respondent authorities have referred to Rule 53 of the said Rules which states that That the unit shall achieve positive NFE to be calculated cumulatively for a period of five years from the commencement of production. The respondent authorities have also referred to section 26(1)(d) read with section 26(2) of the SEZ Act which provides for admissibility of drawback for the goods procured from the domestic tariff area.

The respondent authorities have also referred to section 50(2) of the Customs Act in order to contend that the exporter of any goods while presenting a shipping bill shall at the foot thereof make and subscribe to a declaration as regards the truth of its contents.

It is specifically contended on behalf of the respondent authorities that using letters of permission of a different Unit showing exporter as another Unit tantamounted to deviation of truth and, thus, amounts to misdeclaration.

Rule 30(8) of the said Rules, 2006 has been referred to in order to submit that drawback or duty entitlement passbook credit against supply of goods by domestic tariff area supplier shall be admissible provided payments for the supply are made from the Foreign Currency Accounts of the unit.

The respondent authorities have also referred to Regulation 6A of the Foreign Exchange Management (Foreign Currency Account by a person resident in India) (Third Amendment Regulations, 2002) which reads as follows:6A: Foreign Currency Account of a unit in a Special Economic Zone: A unit located in a special economic zone may open hold and maintain a foreign currency account with an authorised dealer in India provided that: (a) all foreign exchange funds received by the unit in the special economic zone (SEZ) are credited to such account.

(b) no foreign exchange purchased in India against rupees shall be credited to the account without prior permission from the Reserve Bank.

(c) the funds held in the account shall be used for bonafide trade transactions of the unit in the SEZ with the person resident in India or otherwise.

(d) the balances in the accounts shall be exempt from the restrictions imposed under Rule 5 except item 3 and 4 of the Schedule III of the Government of India Notification No.GSR.381(E) dated May 3, 2000.

Provided further that the funds held in these accounts shall not be lent or made available in any manner to any person or entity resident in India not being a unit in Special Economic Zones. Referring to the said Regulations of 2002 the respondent authorities have contended that Regulation 2(iii) stipulates that Foreign Currency Account means the account held or maintained in currency other than the currency of India.

Thus, foreign currency account has to be maintained by the unit concerned and non-compliance thereof shall be deemed that foreign currency has not been received by the said unit.

For the purpose of answering the two questions which have arisen, it is necessary to quote the relevant rules, namely, Rules 22(2).30(8).30(15) and 34 of the said Rules.

The said Rules are quoted hereinbelow:- 22(2).Every Unit and Developer shall maintain proper accounts, financial yearwise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic

Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock: Provided that unit and developers shall maintain such records for a period of seven years from the end of relevant financial year: Provided further that the unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing activities.

30(8).Drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier shall be admissible provided payments for the supply are made from the Foreign Currency Account of the Unit.

Provided that the reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to Special Economic Zone developers shall be admissible even if payment is made in Indian Rupees.

Reimbursement of duty in lieu of drawback against supply of goods to Special Economic Zone developer shall be made as per the procedure prescribed by the Central Government.

(15) A Unit or Developer may procure goods and services from another Unit located in the same or any other Special Economic Zone, subject to following conditions, namely: (i) the receiving Unit or Developer shall file Bill of Entry for home consumption with the Authorized Officer, in quintuplicate, giving description of the goods along with an invoice and packing list for assessment; (ii) on the basis of such assessed Bill of Entry, the goods shall be allowed to be transferred to the receiving Unit or Developer under transshipment permit; (iii) there shall be no requirement to file any additional document or bond(s) for the purpose of transshipment of goods and the transshipment permission shall be stamped on the Bill of Entry itself; (iv) the supplying Unit shall submit the rewarehousing certificate to the Specified Officer having jurisdiction over the supplying unit within forty-five

days, failing which the Specified Officer of the supplying Unit shall write to the Specified Officer having jurisdiction over the receiving Unit or Developer for demand of duty from the receiving Unit or Developer; (v) where the supplying and receiving Units or Developer are located in the same Special Economic Zone, the provisions of sub rules (i) and (iv) shall not apply and the movement of goods shall be allowed and such transactions shall be recorded in the regular books of accounts of the receiving Unit or Developer and the supplying Unit and no Bill of Entry shall be required to be filed.

34. Utilization of goods The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption: Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable. A plain reading of Rule 22(2) reveals that every unit is required to maintain proper accounts of the goods procured from Domestic Tariff Area and their consumption/utilization, production of goods and disposal by way of exports or sales in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or BioTechnology Park Unit, as the case may be, and the balance in stock.

Rule 30(8) provides for drawback or Duty Entitlement Pass Book credit against supply of goods by a Domestic Tariff Area supplier.

It says that the same shall be admissible provided payments for the supply are made from the Foreign Currency Account of the unit provided that the

reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to Special Economic Zone developers shall be admissible even if payment is made in Indian Rupees.

Reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to Special Economic Zone developers shall be made as per the procedure prescribed by the Central Government.

Rule 30(15) contains provisions for procurement of goods by a unit from another unit located in the same or any other Special Economic Zone.

In respect of procurement of goods from another Special Economic Zone, the conditions in sub-rules (i) to (v) have to be complied with.

Clause (v) provides that where the supplying and receiving units are located in the same Special Economic Zone, the provisions of sub-rules(i) to (iv) shall not apply and movement of goods shall be allowed and such transaction shall be recorded in the regular books of accounts and no Bill of Entry shall be required to be filed.

Rule 34 requires the unit to use goods brought into the zone for carrying out the authorized operations and if the unit uses the goods otherwise or fails to account for them, duty shall be chargeable on such goods as if the same had been cleared for home consumption.

The proviso to rule 34 permits a unit which is unable to utilize goods procured from the Domestic Tariff Area to sell the same to another unit in the zone without payment of duty.

The case of the Customs Authorities is that Kariwala Green Bags is a separate legal entity under the law and had submitted documents that they procured raw materials from the Domestic Tariff Area and had submitted claim for drawback.

Manufactured products were exported abroad by Kariwala Industries and not by Kariwala Green Bags.

At the time of export, Kariwala Industries used letter of permission dated August 01, 2005 of Kariwala Green Bags instead of Kariwala Industries and as such, they are guilty of misdeclaration.

However, it is not the case of the Customs Authorities that the duty paid raw materials brought into the zone were used otherwise than for manufacture of goods which were exported.

If the Customs Authorities were not satisfied that the materials were so used, they would have demanded duty from the writ petitioner as provided under Rule 34.

The said Rule has been invoked by the Customs Authorities in the instant case not for demanding duty but because, according to them, the raw materials brought into one unit cannot be treated as raw materials of another unit in the same zone.

However, if one looks at the proviso to Rule 34 carefully, one would find that the said proviso itself contemplates of transfer of goods from one unit to another in the same zone without payment of duty.

Rule 30(15) also provides for transfer from one unit to the another in the same zone without filing of any Bill of Entry.

The finding of the revisional authority regarding non-maintenance of records which would demonstrate utilization of raw materials brought into Unit-III by another Unit of the writ petitioner in the same zone is not in consonance with the findings in the Order-in-Original.

Even if the raw materials brought into Unit-III were utilized in the manufacture of goods in another Unit of the writ petitioner in the zone and exported therefrom, having regard to the provisions of Rule 30(15)(v) and the proviso to Rule 34, it cannot be said that the writ petitioner had violated either Rule 22(2) or Rule 34.

So far as the contention of the Customs Authorities with regard to Kariwala Green Bags and Kariwala Industries Limited being two separate companies is concerned, the same is factually incorrect.

Kariwala Green Bags is only the name given by the corporate entity Kariwala Industries Limited to be a part of its business and there is no existence of a separate company by the name of Kariwala Green Bags.

The letter of permission dated 1st August, 2005 issued in respect of Kariwala Green Bags which was referred to by the Customs Authorities clearly mentions that it is the Unit-III of Kariwala Industries Limited.

Kariwala Green Bags being only a business name of Kariwala Industries Limited, the company has every right to challenge the rejection of the drawback claims of Kariwala Green Bags, which was merely a business name.

As such, it was fully permissible for Kariwala Industries Limited to export in its own name, the goods manufactured in its business name called Kariwala Green Bags and upon mentioning the particulars of the letter of permission issued in the name of Kariwala Green Bags in the export documents and to receive the export proceeds in respect of such exports.

As such, the contention of the Customs Authorities that export in such a manner amounted to misdeclaration or that Kariwala Green Bags did not make any export or receive the export proceeds or that the drawback claims in the name of Kariwala Green Bags was false, cannot have any basis.

Even if the three Units in the zone did not maintain separate accounts or that there was intermingling of accounts of different Units, assuming that the raw materials brought into Unit-III, i.e., Kariwala Green Bags, were utilized in the manufacture of goods in another Unit of the writ petitioner in the zone and exported therefrom, this was permissible since Rule 30(15)(v) and the proviso to Rule 34 of the said Rules permit inter-unit transfer.

It has been contented on behalf of the Customs Authorities that although the writ petitioner made payment for the raw materials procured from Domestic Tariff Area in foreign currency, such payment was not made from a Foreign Currency Account as contemplated under Rule 30(8) of the said Rules.

The provision relating to exemptions, drawbacks and concessions to every developer and entrepreneur is provided under section 26 of the SEZ Act.

Clause (d) of sub-section (1) of section 26 of the SEZ Act provides as follows:(d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur; Sub-section (2) of section 26 provides for the manner in which the Central Government may prescribe the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the developer or entrepreneur under sub-section (1).The statutory definition of the word prescribed can be found under clause (w) of section 2 of the SEZ Act which reads as follows :(w) prescribed means prescribed by rules made by the Central Government under this Act; The Rule containing the terms and conditions adverted to in sub-section (2) of section 26 of the SEZ Act is Rule 22 of the said Rules.

The said Rule 22 provides for the terms and conditions for availing exemptions, drawbacks and concessions to every developer and entrepreneur for authorized operations.

There is no provision in the said Rule 22 which stipulates payment for goods procured from Domestic Tariff Area from a Foreign Currency Account.

Rule 30 of the said Rules provides for procedure for procurements of goods from the Domestic Tariff Area.

Sub-rule (8) of Rule 30 of the said Rules which has been quoted hereinbefore thus makes it clear that payment from Foreign Currency Accounts is a matter of procedure only.

It is the admitted position that at the material period the writ petitioner did not maintain a Foreign Currency Account.

However, it can be said that the writ petitioner substantially complied with the requirements of Rule 30(8) by making payment in foreign currency.

The export proceeds of Unit-III received in foreign currency were credited to a current account from which payment was made.

The writ petitioner was, in fact, granted drawback for other periods where payment in foreign currency was made from the same current account which was not a Foreign Currency Account.

The fact that the concerned respondent authorities granted drawback for other periods during which payment was made in foreign currency from the same current account and not a Foreign Currency Account, by itself, will clearly demonstrate that the provisions of Rule 30(8) of the said Rules are not mandatory in nature and substantial compliance has been accepted by the respondent authorities in the past.

The Madras High Court in the case of Ford India PVT.LTD.versus Assistant ComMr.of C.

Ex., Chennai reported in 2011 (272) E.L.T.353 (Mad.) has held, inter alia, that in the matter of grant of export benefit, liberal interpretation was to be accorded in respect of technical lapses so as not to deny the substantive benefit for procedural infraction/lapse.

It is noticed from the said judgement that the Madras High Court approved the views taken by the Government of India in a decision reported in 2006 (204) E.L.T.632 (in re: Modern Process Printer).The Customs Authorities have referred to Regulation 6A of the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Third Amendment) Regulations, 2002.

The language of the said Regulation makes it clear that a unit located in a Special Economic Zone may open hold and maintain a Foreign Currency Account.(emphasis supplied).As such, it would be apparent that Regulation 6A does not make it mandatory for a unit located in a Special Economic Zone to open a Foreign Currency Account.

If such a unit chooses to open a Foreign Currency Account as provided under Regulation 6A, it has also to comply with the other requirements provided under the said Regulation; such as credit of all foreign exchange funds received by the unit into such account, etc. Regulation 6A is only an enabling provision whereby a unit in a Special Economic Zone is permitted to open a Foreign Currency Account if it so chooses subject to the compliance of the conditions as stipulated therein.

Simply because a unit has not opened a Foreign Currency Account as provided under the said Regulation, neither realization of the export proceeds become invalid nor can the actual receipt of foreign currency be either ignored or dismissed.

It is clear from the records that there is no dispute with regard to the writ petitioner having procured duty paid raw materials from the Domestic Tariff Area into FSEZ or used such raw materials in the manufacture of goods within the zone.

It is also the admitted fact that the finished goods were exported from the zone and export proceeds were realized in foreign currency.

As such, the writ petitioners claim for drawback ought to have been granted treating payment for goods procured from Domestic Tariff Area in foreign currency from the current account to which the foreign currency export proceeds to Unit-III were credited, considering the same to be substantial compliance of Rule 30(8) of the said Rules.

In such circumstances as stated above, the writ petition is allowed upon setting aside the Revisional order dated 28th May, 2013 with a direction upon the concerned respondent authorities to allow the drawback claim of the writ petitioner as applicable preferably within a period of six weeks but not later than eight weeks from the date of communication of a photostat certified copy of this judgement and order.

Urgent photostat certified copy of this judgement and order, if applied for, be supplied to the parties on priority basis.

(Biswanath Somadder, J.)

