CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

CUSTOMS APPEAL NO. 87556 OF 2024

(Arising out of Order-in-Original No. CAO No. CC/RK/24/2023-24 Adj. (X) ACC dated 15.11.2023 passed by the Commissioner of Customs (Exports), ACC, Andheri (East), Mumbai)

M/s. Haji's International **....Appellant**
181/187, Narsi Natha Street,
Bhat Bazar, Masjid (West),
Masjid Bunder,
Mumbai - 400009

VERSUS

Commissioner of Customs (Export) **.....Respondent**
ACC, Mumbai, Zone-III

WITH

CUSTOMS APPEAL NO. 85883 OF 2025

(Arising out of Order-in-Original No. CAO No. CC/RK/24/2023-24 Adj. (X) ACC dated 15.11.2023 passed by the Commissioner of Customs (Exports), ACC, Andheri (East), Mumbai)

Shri Ashfaq Anwar Nursumar, **....Appellant**
Partner of M/s. Haji's International,
301/302, Garden View Tower,
Sahkar Road, S.V. Road,
Jogeshwari (West),
Mumbai - 400102

VERSUS

Commissioner of Customs (Export) **.....Respondent**
ACC, Mumbai, Zone-III

APPEARANCE:

Shri J.C. Patel and Ms. Shamita Patel, Advocates for Appellant

Shri C.S. Vinod, Authorized Representative appearing for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 17.04.2026
Date of Decision: 30.04.2026

FINAL ORDER NO's. 85615-85616/2026

JUSTICE DILIP GUPTA:

Customs Appeal No. 87556 of 2024 has been filed by M/s. Haji's International[1] to assail that portion of the order dated 15.11.2023 passed by the Commissioner of Customs (Export), ACC, Mumbai, Zone-III[2] that rejects the duty drawback of Rs. 773.86 lakhs under the provisions of section 75(1) of the Customs Act, 1962[3] with a direction to recover the amount already disbursed from the appellant under rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995[4] with interest. The order also rejects the duty drawback amount of Rs. 2,24,93,070/- which was claimed by the appellant and disbursed under 198 shipping bills to the exporter under the provisions of rule 16A of the 1995 Drawback Rules. The order also confiscates the goods with an option to redeem the same by payment of redemption fine and also imposes penalty on the appellant under section 114(i)/(iii) and section 114AA of the Customs Act.

2. **Customs Appeal No. 85883 of 2025** has been filed by Ashfaq Anwar Nursumar to assail that portion of the order dated 15.11.2023 passed by the Commissioner that imposes penalty upon him under section 114(i)/(iii) and section 114AA of the Customs Act.

3. The appellant is a partnership firm engaged in the export of Garments. Ashfaq Anwar Nursumar is a partner in the said firm. During the period January, 2012 to December, 2016, the appellant undertook exports of garments, mainly to Nigeria, through 699 shipping bills. The said exports were undertaken under claim for duty drawback at the All

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1. **the appellant**
2. **the Commissioner**
3. **the Customs Act**
4. **the 1995 Drawback Rules**

Industry Rate notified by the Government for garments in terms of section 75 of the Customs Act read with rule 3 of the 1995 Drawback Rules.

4. The consignments were assessed by the proper officers of customs and a Let Export Order was issued and duty drawback at All Industry rate to the extent of Rs. 773.86 lakhs was received by the appellant in respect of such exports. According to the appellant, the sale proceeds of the exported goods by way of foreign exchange inward remittance were also received in respect of such goods and to support this fact, Bank Realization Certificates have been enclosed with the appeal.

5. In August, 2015, the Directorate of Revenue Intelligence[5] initiated investigations against Suhel Parvez Ansari, who according to the DRI was providing fake invoices of supply of goods to exporters without supply of goods. The case of DRI was that such fake invoices were issued in the names of 22 firms floated by Suhel Ansari with the help of a Chartered Accountant, wherein the said firms were shown as local suppliers of goods to various exporters. In his statement recorded on 24.08.2015, Suhel Ansari gave names of the exporters to whom he claims to have provided such fake invoices and one of the exporters named was "Haji's International" in which Haji Bhai was the contact person to whom he had supplied fake bills.

6. Based on the said statement of Suhel Ansari, the department initiated investigations against the appellant on the assumption that Haji's International mentioned by Suhel Ansari is the appellant. The department recorded statements of the appellant and Ashfaq Anwar Nursumar on 01.06.2017 and 28.10.2018. In his statement dated 01.06.2017, Ashfaq Anwar Nursumar stated that the appellant is engaged in export of textile

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5. DRI

products and garments mainly to African countries and that the goods for export are purchased from Gujarat, Tamil Nadu and Kolkata. He gave the names of manufacturers from whom export goods were purchased as Charvi Creation (Surat), Navkar Exports (Erode, Tamil Nade), Western Dyeing (Jethpur, Gujarat), Metric Fashion (Kolkata), Little Doll Creation (Kolkata) and JNR Collection (Kolkata). He also stated that he always made payments for the goods purchased through cheques and online payments from his bank account and that he had not purchased garments from the firms named by Suhel Ansari. He also stated that he did not know Suhel Parvez Ansari or his employees. He also stated that at times, his foreign buyers identify and procure the goods from local suppliers which are then exported by the appellant and the appellant makes payment to such local suppliers.

7. A show cause notice dated 14.12.2022 was issued to the appellant, calling upon the appellant to show cause as to why the duty drawback of Rs. 773.86 lakhs paid to the appellant on goods exported during January, 2012 to December, 2016, should not be recovered from the appellant under rule 16 of the 1995 Drawback Rules on the ground that against such export goods no duty/tax appears to have been paid on procurement of goods and on the ground that the market value of the goods exported appeared to be lower than claimed drawback amount. Further, out of the said drawback of Rs. 773.86 lakhs, drawback of Rs. 2,24,93,070/- pertaining to 198 shipping bills was also liable to be recovered on the ground of non-realization of foreign exchange.

8. The show cause notice also called upon Ashfaq Anwar Nursumar to show cause as to why penalty should not be imposed upon him under section 114(i)/(iii) and section 114AA of the Customs Act.

9. The appellant filed a reply to the show cause notice and contested the allegations made therein. The appellant also submitted that the demand raised under rule 16 or rule 16A of the 1995 Drawback Rules was not maintainable in law since the 1995 Drawback Rules had ceased to operate with the enactment of Customs and Central Excise Duties Drawback Rules, 2017[6] and the demand under rule 16 or rule 16A of the 1995 Drawback Rules was not covered by the saving provisions contained in rule 20(2) of the 2017 Drawback Rules. The appellant also submitted that rule 16A of the 1995 Drawback Rules will also not be attracted as the export proceeds had been realized as is clear from the Bank Realization Certificates.

10. Ashfaq Anwar Nursumar also filed a detailed reply to the show cause notice and contested the allegations made therein.

11. The Commissioner, however, by order dated 15.11.2023 confirmed the duty drawback under rule 16 of the 1995 Drawback Rules. The Commissioner also imposed penalties upon the appellant and Ashfaq Anwar Nursumar.

12. The findings recorded by the Commissioner with regard to applicability of rule 16 of the 1995 Drawback Rules is as follows:

> "29.2 It is a matter of fact that proposal for recovery of drawback has been made under the erstwhile provisions of Rule 16 of the Drawback Rules, 1995 as the goods covered under Shipping Bills were of that period and said Rules had been repealed w.e.f. 01-10-2017. *****
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> 29.3 **From the perusal of Section 159A,** it is clear that vide clause (b), it provides **that repeal does not affect the previous operation of any rule, regulation, notification or order so amended,**

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6. the 2017 Drawback Rules

repealed, superseded or rescinded or anything duly done or suffered thereunder. Further, vide clause (e) it also provides that repeal does affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

29.4 Coming to the instant case, **it is clear that present proceedings have been initiated prior to coming into force of Drawback Rules, 2017, therefore, contention of the notice is not tenable in view of the aforesaid legal position as discussed above. Accordingly, invoking of Drawback Rules, 1995 is as per scheme of the statute.** In the instant case, forgery has come to light. It is a matter of fact that fraud vitiates everything, as discussed supra. This infact dismisses all the arguments of the noticees. *****"

(emphasis supplied)

13. Shri J.C. Patel, learned counsel for the appellant assisted by Shamita Patel submitted that the Commissioner committed an illegality in holding that rule 16 of the 1995 Drawback Rules would be applicable. Elaborating this submission, learned counsel submitted that the 1995 Drawback Rules ceased to operate on the commencement of the 2017 Drawback Rules i.e. 01.10.2017 and there is no saving clause under rule 20(2) of the 2017 Drawback Rules relating to proceedings under rule 16 of the 1995 Drawback Rules for recovery or drawback paid in respect of goods exported before the commencement of the 2017 Drawback Rules. Learned counsel also pointed out that section 159A of the Customs Act will also not

save proceedings under rule 16 of the 1995 Drawback Rules because the said section would apply only when if there is no different intention from the repealing provisions contained in rule 20(2) of the 2017 Rules. Learned counsel also submitted that for the same reason, recovery could not have been made under rule 16A of the 1995 Drawback Rules. In support of this contention, learned counsel placed reliance upon the judgment of the Punjab and Haryana High Court in **Hindustan Construction Company Ltd.** vs. **State of Haryana and others**[7], which judgment was upheld by the High Court in **The State of Haryana and others** vs. **Hindustan Construction Company Ltd.**[8]. Learned counsel also placed reliance upon the judgment of the Punjab and Haryana High Court in **Famina Knit Fabs** vs. **Union of India**[9].

14. Learned counsel for the appellant also submitted that the show cause notice dated 14.12.2022 issued for demand of recovery of duty drawback on exports of garments that took place from January, 2012 to December, 2016 is vitiated because of un-reasonable delay and that, in any view of the matter, the grant of duty drawback on All Industry Rate of drawback cannot be questioned and denied on the ground that the appellant had shown procurement of the export goods against fake invoices said to have been provided to the appellant by Suhel Parvez Ansari.

15. Shri C.S. Vinod, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal as rules 16 and 16A of the 1995 Drawback Rules would apply.

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7. 2005 (2) TMI 785 – Punjab and Haryana High Court
8. 2017 (9) TMI 858 – Supreme Court
9. 2020 (371) E.L.T. 97 (P & H)

16. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

17. To appreciate the main submission advanced by the learned counsel for the appellant, it would be appropriate to refer to the relevant provisions.

18. Rule 16 of the 1995 Drawback Rules under which the demand has been confirmed provides that amount of drawback paid erroneously can be demanded by a proper officer of the Customs. It is reproduced below:

> "**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 (52 if 1962)."

19. The relevant portion of rule 16A of the 1995 Drawback Rules is reproduced below:

> "**16A. Recovery of amount of Drawback where export proceeds not realised. –**
>
> (1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under [the Foreign Exchange Regulation Act, 1999 (42 of 1999)] [Substituted by G.S.R. 781 (E), dated 6th December, 1995 (w.e.f. 6th December, 1995).] including any extension of such period, such drawback shall be recovered in the manner specified below. *****"

20. With effect from 01.10.2017, the 2017 Drawback Rules came into effect. Rule 20 of the 2017 Drawback Rules deals with repeal and saving. In view of the provisions of sub-rule (1) of rule 20, the 1995 Drawback Rules ceased to exist. Rule 20 is reproduced below:

> "**20. Repeal and saving. –**
>
> (1) From the commencement of these rules, the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall cease to operate.
>
> (2) Notwithstanding such cesser of operation –
>
> (a) every application made by a manufacturer or an exporter for the determination or revision of the amount or rate of drawback in respect of goods exported before the commencement of these rules but not disposed of before such commencement shall be disposed of in accordance with the provisions of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as if these rules had not been made;
>
> (b) any claim made by an exporter or his authorised agent for the payment of drawback in respect of goods exported before the commencement of these rules but not disposed of before such commencement shall be disposed of in accordance with the provisions of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as if these rules had not been made;
>
> (c) every amount or rate of drawback determined under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and in force immediately before the commencement of these rules shall cease to operate in respect of goods exported on or after commencement of these rules."

21. Section 159A of the Customs Act, on which reliance has been placed by the Commissioner in the impugned order, is reproduced below:

> "**159A. Effect of amendments, etc., of rules, regulations, notifications or orders. -** Where any rule, regulation, notification or order made or issued under this Act or any notification or order issued under such rule or regulation, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not-
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> (a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or
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> (b) affect the previous operation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded."

22. The show cause notice that was issued to the appellant, called upon the appellant to show cause why the drawback amount of Rs. 773.86 lakhs claimed by the appellant should not be rejected as the market value of the export goods appeared to be lower than the claimed drawback amount and why it should not be recovered from the appellant under rule 16 of the 1995 Drawback Rules.

23. The appellant contended that rule 16 of the 1995 Drawback Rules could not be resorted to in cases where show cause notices were issued

after 01.10.2017 as rule 20(2) of the 2017 Drawback Rules does not save rule 16 of the 1995 Drawback Rules.

24. The Commissioner, after referring to the provisions of section 159A of the Customs Act, observed that from clause (b) of the said section, it is clear that the repeal does not affect the operation of any rule so repealed. The Commissioner also referred to clause (e) of section 159A of the Customs Act to hold that the repeal of the rule does not affect any proceeding in respect of any such right, privilege, obligation and liability and such investigation, legal proceeding or remedy may be instituted or continued or enforced as if the rule had not been repealed.

25. After having so observed, the Commissioner concludes that the "present proceedings have been initiated prior to come into force of the Drawback Rules, 2017 and, therefore, contention of the appellant is not tenable".

26. The aforesaid observations and findings recorded by the Commissioner are not borne out from the provisions of section 159A of the Customs Act or the factual position of this appeal.

27. The Commissioner failed to appreciate that section 159A of the Customs Act provides that where any rule is repealed then **unless a different intention appears, such repeal shall not affect the operation of any rule that has been repealed**.

28. The appellant had placed reliance upon the judgment of the Supreme Court in **Hindustan Construction**, wherein the issue that arose for consideration was whether the revisional power under section 40 of the Haryana General Sales Tax Act, 1973, after its repeal on 01.04.2003 by the Haryana Value Added Tax, 2003, was sustainable. The Supreme Court examined the provisions of section 61 of the 2003 Act which deals with

repeal and observed that the language of the new enactment has to be examined to see whether it expresses a different intention from the earlier Act. This observation was made by the Supreme Court in view of the provisions of section 61(2) of the 2003 Act. Section 61(2) of the 2003 Act is reproduced below:

> "**61(2)** Notwithstanding anything contained in sub-section (1), –
>
> (a) any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if the said Act had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred.
>
> **Notwithstanding anything to the contrary contained in any judgement, decree or order of any court or other authority, where no review, revision or corrective action could be initiated or finalized in respect of any assessment, order, proceeding under the said Act prior to or after 1st April, 2003, because of judgement or decree of any court or Tribunal and the said assessment or order passed under the said Act had attained finality, the limitation of five years as specified under section 40 of the said Act shall be deemed to be eight years;**"
>
> **(emphasis supplied)**

29. The observations made by the Supreme Court on section 61(2) of the 2003 Act are:

> 8. We have considered the respective submissions. **A simple repeal of an Act leaves no room for expression of a contrary opinion. However, if the repeal is followed by a fresh enactment on the**

> **same subject, the applicability of the General Clauses Act would undoubtedly require an examination of the language in the new enactment to see if it expresses a different intention from the earlier Act.** The enquiry would necessitate an examination if the old rights and liabilities are kept alive or whether the new Act manifests an intention to do away with or destroy them. If the new Act manifests a different intention, the application of the General Clauses Act will stand excluded.
>
> 9. **There were no proceedings pending against the respondent under the Act of 1973 when the new Act came into force on 01.04.2003. The suo-moto revisional power under Section 40 of the former Act was exercised on 07.06.2004. The repeal and saving clause in Section 61 of the Act of 2003, saved only pending proceedings under the repealed Act. The intendment clearly was that matters which stood closed under the Act of 1973 had to be given a quietus and could not be reopened.**
>
> 10. **The assessment under the Act of 1973 having been completed and refund ordered, the exercise of suo-moto revisional powers under Section 40 of the same after repeal was clearly unsustainable in view of the contrary intention expressed under Section 61 of the Act of 2003, saving only pending proceedings.**"
>
> **(emphasis supplied)**

30. The aforesaid decision of the Supreme Court in **Hindustan Construction** holds that if the repeal is followed by a fresh enactment on the same subject, then the applicability of the General Clauses Act would require an examination of the language of the new enactment to see whether it expresses a different intention from the earlier Act. The requirement under the General Clauses Act and the provisions of section

159A of the Customs Act are similar as both require that if an Act or a Rule is repealed and is followed by the fresh enactment, then it has to be ascertained whether a different intention appears after such a repeal.

31. The Commissioner, however, even after noting that the appellant had placed reliance upon the judgment of the Supreme Court in **Hindustan Construction** did not consider it appropriate to even deal with the judgment and examine whether the said judgment would apply to the facts of the case.

32. It is not in dispute that re-payment of the drawback amount was claimed by the department under rule 16 of the 1995 Drawback Rules and the demand has also been confirmed under the said Rules.

33. It has, therefore, to be examined whether after coming into force of the 2017 Drawback Rules, resort could have been taken by the department on the provisions of rule 16 of the 1995 Drawback Rules for claiming re-payment of the drawback amount.

34. The 2017 Drawback Rules came into force on 01.10.2017. Rule 20(1) of the 2017 Drawback Rules which deals with "repeal and saving" provides in sub-clause (1) that from the commencement of the 2017 Rules, the 1995 Drawback Rules shall cease to operate. However, the provisions of rule 20(2) will have to be examined because it provides that notwithstanding such cessation, three provisions of the 1995 Drawback Rules would apply. These three situations mentioned in rule 20(2) do not deal with rule 16 of the 1995 Drawback Rules.

35. The next issue that arises for consideration is whether the provisions of section 159A of the Customs Act would revive rule 16 of the 1995 Drawback Rules.

36. A perusal of section 159A of the Customs Act shows that if any rule is repealed, then unless a different intention appears, such repeal shall not affect the previous operation of any rule.

37. It has, therefore, to be seen whether a different intention appears from the provisions of rule 20 of the 2017 Drawback Rules. As noticed above, rule 20(2) deals with three situations only and none of these three situations relates to recovery of excess payment of drawback. There is, therefore, no manner of doubt that a "different intention" exists because if the intention was to revive rule 16 of the 1995 Drawback Rules, such a condition would have been contained in rule 20(2) of the 2017 Drawback Rules.

38. This is precisely what was held by the Supreme Court in **Hindustan Construction**.

39. The judgment of the Punjab and Haryana High Court in **Famina Knit Fabs** squarely covers the issue involved in the present appeal. The writ petitioner had claimed benefit of duty drawback permissible under the 1995 Drawback Rules. A show cause notice dated 09.02.2018 was issued to the writ petitioner to show cause why the duty drawback amount should not be disallowed and recovered under rule 16 of the 1995 Drawback Rules, section 159A of the Customs Act and rule 20(2) of the 2017 Drawback Rules. The show cause notice was adjudicated and it was held:

> "11. *****
>
> **An inevitable conclusion from the reading of afore quoted Section 159A of Act, 1962 is that repealed Rules or Regulations are saved provided different intention does not appear. In the present case, there is specific Rule 20 in Drawback Rules, 2017 which saves few acts committed under Drawback Rules, 1995. As there is specific Rule 20 in Drawback Rules, 2017**

saving few rights accrued/created under Drawback Rules, 1995, Section 159A of 1962 Act cannot come into play and we are bound to look into different clauses of Rule 20 to find out that to which extent erstwhile rights and liabilities arising out of Drawback Rules, 1995 are saved. Clause (a) of Rule 20(2) saves applications made for determination or revision of drawback which are still pending; clause (b) saves any claim of drawback which is pending with respect to goods exported prior to commencement of 2017 Rules; and clause (c) provides that any rate or amount of drawback determined under Rules of 1995 shall not be applicable to goods exported after commencement of Rules, 2017.

From the bare reading of aforesaid clauses of Rule 20(2) of Drawback Rules, 2017, it is evident that none of clause deal with drawback claims filed and sanctioned prior to 1.10.2017.

By saving few rights accrued under Drawback Rules, 1995 Government has expressed different intention so Section 159A of 1962 Act becomes inapplicable. Had there been intention to save all rights and liabilities arising from Drawback Rules, 1995, the Government would not have inserted Rule 20(2) in Drawback Rules, 2017 saving only few rights/acts. Had there not been Rule 20(2) in Drawback Rules, 2017 as is in present form and manner, Section 159A of 1962 Act would have come into play and saved all the rights and liabilities arising out of Drawback Rules, 1995.

Contention of counsel for DRI that investigation was pending on the date of repeal of Drawback Rules, 1995 so claim of Petitioner was pending thus Rule 20(2)(b) of Drawback Rules, 2017 saves their action is absolutely mis-conceived because it is conceded position that no drawback claim was pending even at the time of initiation of investigation in 2012 rather DRI initiated investigation qua drawback released prior to December' 2012. It is clear from the bare reading of Rule 20(2)(b) of Drawback Rules, 2017 that

> it saves any claim which is pending with respect to goods exported prior to 1.10.2017 and in the present case no claim was pending on 1.10.2017."
>
> **(emphasis supplied)**

40. It would be seen from a perusal of the aforesaid quoted portion of the judgment of the Punjab and Haryana High Court that rule 20(2) of the 2017 Drawback Rules does not deal with drawback claim filed and sanctioned prior to 01.10.2017 and by saving few rights that accrued under the 1995 Drawback Rules, the Government expressed a different intention for rule 16 of the 1995 Drawback Rules and so section 159A of the Customs Act would not be applicable. The Punjab and Haryana High Court also noted that rule 20(2) of the 2017 Drawback Rules saves any claim which is pending with respect to goods exported prior to 01.10.2017, but since no claim was pending as on 01.10.2017, rule 20(2) would not apply.

41. The Commissioner, however, as would be seen from the order observed that the proceeding against the appellant had been initiated prior to coming into force of the 2017 Drawback Rules. This observation is factually incorrect. The show cause notice was issued on 14.12.2022 and, therefore, the proceedings had not been initiated prior to 01.10.2017. In fact, the department had not taken any steps for recovery of the drawback amount prior to 01.10.2017.

42. The inevitable conclusion, therefore, that follows from the aforesaid discussion is that rule 16 of the 1995 Drawback Rules could not have been resorted to by the department for recovery of the drawback amount from the appellant. The confirmation of demand under rule 16 is, therefore, bad in law and deserves to be set aside.

43. For the same reasons, rule 16A of the 1995 Drawback Rules could not have been applied as rule 20(2) does not save the right to recover amount of drawback. The sale proceeds of the exported goods by way of foreign exchange inward remittance was also received in respect of such goods and this fact is supported by the Bank Realization Certificates that have been enclosed in the appeal.

44. What has also to be noted in the present case is that the appellant had claimed drawback at the All Industry Rate notified by the Government for garments in terms of section 75 of the Customs Act read with rule 3 of the 1995 Drawback Rules. The consignments were assessed by the proper officer of customs and a Let Export Order was issued. The duty drawback at All Industry Rate was received by the appellant.

45. As the appellant had claimed drawback at the All Industry Rate applicable to the goods, the drawback amount cannot be questioned and denied on the ground that the appellant had shown procurement of the export goods against fake invoices alleged to have been provided to the appellant by Suhel Parvez Ansari. The statement of Suhel Parvez Ansari made under section 108 of the Customs Act cannot also be relied upon as the procedure contemplated under section 138B of the Customs Act was not followed.

46. The goods could not have been confiscated under section 113 of the Customs Act as it applies to goods which are to be taken out of India and not to goods which have already been taken out of India. As the goods could not have been confiscated, penalty under section 114 of the Customs Act could not have been imposed upon the appellant.

47. Penalty under section 114AA of the Customs Act could also not have been imposed upon the appellant as the appellant had not knowingly or

intentionally made, signed or used any declaration, statement or document which is false or incorrect in the transaction of any business for the purposes of the Customs Act.

48. Penalty upon Ashfaq Anwar Nursumar, partner of the appellant, under section 114 and section 114AA of the Customs Act cannot also be sustained for the same reasons.

49. The impugned order dated 15.11.2023 passed by the Commissioner is, accordingly, set aside and both the appeals are allowed.

(Order pronounced on **30.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Shreya