IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9662 of 2014
and
M.P.No.1 of 2014

M/s.Adwaith Lakshmi Industries Limited,
Sangothbipalayam,
rep. By Authorised Signatory,
Kaniyur Post,
Karumathampatti via,
Krumanthapatti,
Coimbatore 641 059. [PETITIONER]

Vs

1. The Joint Secretary,
   Ministry of Finance,
   Department of Revenue,
   Government of India,
   No.14, Hudco Vishala Building, B-Wing,
   6th Floor, Bhikaji Cama Place,
   New Delhi 110 066.
2. The Commissioner of Customs,
   No.1, Williams Road,
   Cantonment,
   Trichirappalli 620 001.

[RESPONDENTS]

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari to call for the records of the case in the impugned order No.296/2013-Cus. Dated 17.12.2013 passed by the first respondent and to quash the said order No.206/2013-Cus. dated 18/19.12.2013 passed by the first respondent.

For Petitioner : Mr.T.Ramesh
For Respondents : Mr.V.Sundareswaran
Standing Counsel

ORDER

The petitioner is aggrieved against the order dated 18.12.2013, passed by the first respondent, rejecting the revision application filed by the petitioner.

2.The case of the petitioner is as follows:

The petitioner is an exporter. A sum of Rs.54,623/- was sanctioned to the petitioner as a drawback amount in respect of a Shipping Bill No.38 dated 03.01.2008. The petitioner has also realised the export proceeds from the foreign customers. The revenue initiated proceedings and called upon the petitioner to produce documentary evidence as a proof of receipt of export proceeds. The petitioner filedBank Realisation Certificate and also the bank advise certificate issued by the Indian Bank, Coimbatore, as a proof for realisation of export proceeds. However, the Adjudicating Authority passed an Order in Original No.116/2010 and ordered for recovery of a sum of Rs.54,623/-, also by imposing a penalty of Rs.2000/-. The petitioner challenged the said order before the First Appellate Authority, who in turn, vide order dated 18.10.2011, remanded the matter back for producing Bank Realisation Certificate to the Adjudicating Authority for verification. In the denovo proceedings, the petitioner filed the Bank Realisation Certificate along with Chartered Accountant Certificate. However, the Adjudicating Authority by order dated 26.06.2012, found that the drawback amount is liable to be recovered. A penalty of Rs.5000/- was also imposed. Further appeal filed before the First Appellate Authority was dismissed on 31.10.2012, followed by the dismissal of the revision by the first respondent on 17.12.2013.

3.The respondents filed a counter affidavit, wherein it is stated as follows:

As per section 75(1) of the Customs Act, 1962, read with Rule 16A of the Customs and Central Excise Duties and Service Tax Drawback Rules 1995, the exporter has to produce the evidence of realisation of export proceeds and if the exporter fails to produce the evidence, the drawback paid shall be recovered along with interest. In the present case, the petitioner failed to produce the evidence for realization of the export proceeds, which is evident from the failure to produce the Bank Realisation Certificate. The petitioner had not produced the Bank Realisation Certificate and even when an opportunity was given in the denovo adjudication proceedings, the petitioner could not produce the Bank Realisation Certificate. Instead, he produced the negative certificate dated 30.02.2012, issued by the Chartered Accountant. The above certificate did not contain the details of the Shipping Bill No., Invoice Number, Due date of realisation, amount pending realisation, etc., Therefore, the Adjudicating Authority confirmed the recovery of drawback. The petitioner did not clearly indicate that the export sale proceeds were realized within one year of exported sale of goods.

4.Mr.T.Ramesh, learned counsel appearing for the petitioner submitted that the Appellate Authority, while disposing the appeal at the first round, has clearly found that the Bank Realisation Certificate produced by the appellant can be accepted as a proof of export, if all required particulars are available in the said Certificate. Therefore, he contended that the Adjudicating Authority cannot reject the claim of the petitioner in the denovo proceedings without considering the Bank Realisation Certificate produced by the petitioner, which was accepted by the Commissioner Appeals as a proof of export. In support of his submission, the learned counsel also produced copy of such Bank Realisation Certificate before this court.

5.Per contra, learned counsel appearing for the respondents submitted that the petitioner has not produced the proof for realisation of the export proceeds within the stipulated time limit, as specified under Rule 16A of the Drawback Rules, 1995 and therefore, the order passed against the petitioner concurrently by all the authorities, cannot be found fault with.

6.Heard both sides.

7.The petitioner was originally sanctioned with a drawback amount of Rs.54,623/- in respect of Shipping Bill No.38 dated 03.01.2008. Thereafter, proceedings were initiated against the petitioner, calling upon them to produce the documentary evidence as a proof of receipt of export proceeds, as contemplated under Rule 16A of the said Rules. According to the petitioner, they filed the Bank Realisation Certificate and Bank Advice Certificate issued by the Indian Bank, Coimbatore as a proof of realisation of export proceeds. When the Adjudicating Authority rejected the contention of the petitioner, they challenged the same before the First Appellate Authority in Appeal No.28 of 2011. The First Appellate Authority, by order dated 18.10.2011, disposed the appeal by remitting the matter back to the Original Authority with a further direction to the petitioner to produce the Bank Realisation Certificate to the lower Authority for verification and with a further direction to the lower Authority to verify the Bank Realisation Certificate, as per the guideline given in paragraph 04.1 and allow the duty drawback if any as per law. The relevant portion of the said order is extracted hereunder:

> "In the instant appeal, the appellants have exported their goods and submitted the Bank realization Certificate and Bank Advice Certificate for the realization of their sale proceeds. The lower authority has stated that the appellants have produced Bank Realization Certificate which was not in the prescribed format and Foreign Inward

Certificate from the bankers as a proof for receipt is not a valid and acceptable document under CBEC Board's Circular No.05/2009-Cus dated 02.02.2009. Only the Bank Realization Certificate will be acceptable according to the prescribed format, is only valid document. But the appellants have produced the BRC, which was not in a prescribed format. If all required particulars available in the BRC (bank realization Certificate) though not in prescribed format, the same can be accepted as a proof of export and the lower authority is directed to verify the same in the above guidance and allow the duty drawback amount if otherwise eligible as per law.

In view of the above discussion, the following order is passed.

ORDER

06(a) The appellants are directed to produce the BRC to the lower authority for verification.

(b) The lower authority is directed to verify the same as per the guidance given in para 04.1 and allow the duty drawback if any as per law.

(c) The appeal is disposed of on the above terms.”

8.Perusal of the above order would show that the Bank Realisation Certificate produced before the said Appellate Authority was directed to be accepted as a proof of export, if all required particulars are available therein. The Appellate Authority has also pointed out that such Certificate produced, though not in a prescribed form, can be accepted as a proof of export.

9.Admittedly, the Revenue has not challenged the said order and on the other hand, after such remand, the Original Authority conducted the denovo proceedings and once again ordered recovery of the drawback amount without accepting the case of the petitioner.

10.Perusal of the order of the Original Authority would show that there is no discussion or finding given with regard to the Bank Realisation Certificate referred to by the Appellate Authority in his order dated 18.10.2011, especially, when such Authority has directed the Adjudicating Authority to verify the same and allow the duty drawback as per law. No doubt, the Original Authority has given a finding that the petitioner has not satisfied the requirement of Rule 16A. It is also found by the Original Authority that the negative certificate issued by the Chartered Accountant is not confirming that the realisation was made within the stipulated/extended time. But at the same time, it is evident that the Original Authority has not adverted to the particular Bank Realisation Certificate produced by the petitioner and considered the same, especially when the Appellate Authority has specifically directed to do so. Therefore, I am of the view that confirmation of such order passed by the Original Authority in the further appeal and revision also cannot be sustained, unless the Original Authority consider the Bank Realisation Certificate produced by the petitioner and give a specific finding as to whether those Bank Realisation Certificates are containing the required particulars for allowing the duty drawback.

11.Therefore, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Original Authority viz., the second respondent herein for passing fresh order in the light of the order passed by the Appellate Authority in Appeal No.38/2011 dated 18.10.2011. The petitioner should also be given an opportunity of personal hearing. The Original Authority shall pass such fresh order within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1. The Joint Secretary,
   Ministry of Finance,
   Department of Revenue,
   Government of India,
   No.14, Hudco Vishala Building, B-Wing,
   6th Floor, Bhikaji Cama Place,
   New Delhi 110 066.
2. The Commissioner of Customs,
   No.1, Williams Road,
   Cantonment,
   Trichirappalli 620 001.

+1cc to Mr.T.Ramesh , Advocate, S.R.No.24147
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.24340

W.P.No.9662 of 2014

sj(co)
rmp(09/05/17)