IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2017

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THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.19958 of 2006
and WP.MP.No.2 of 2006

M/s.The Handicrafts and Handlooms Exports
Corporation of India Ltd.,
Rep. by its General Manager,
Apurva Varma,
No.76, [Old No.143], Greams Road,
Thousand Lights, Chennai-6. .. Petitioner

Vs

1.Joint Secretary to the Govt. of India,
Department of Revenue,
Ministry of Finance,
14, Hudco Vishala Bldg., B-Wing,
6th Floor, Bhikaji Cama Place,
New Delhi 110 066.

2.The Commissioner of Customs [Appeals],
Custom House, No.60, Rajaji Salai,
Chennai-1.

3.The Assistant Commissioner of Customs,
[Drawback-Manual],
Customs House, No.60, Rajaji Salai,
Chennai-1.

4.Reserve Bank of India,
Rep. by its General Manager,
Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari to call for the records of the 1st respondent culminating in the issue of order No.217/2005 dated 25.07.2005 issued from File No.373/22/DBK/2005-RA and quash the same.

For Petitioner	:	Mr.S.Murugappan
For R1 & R4	:	No appearance
For R2 & R3	:	Mr.A.P.Srinivas, Senior Panel Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondents 2 and 3.

2. The petitioner is a Government of India Company and they had exported a consignment of power loom ready made garments for a value of Rs.3,01,624/- through the Port of Chennai under shipping bill No.37 dated 12.01.1997. On the goods so exported, the petitioner was eligible to claim drawback as per the Drawback Schedule published by the Government of India as export incentive. Accordingly, the petitioner claimed a drawback of Rs.63,341/-, while filing their shipping bill. On scrutiny, the said amount was sanctioned and payment was made on 06.01.1998.

3. While so, on 01.01.2003, a show cause notice was issued to the petitioner calling upon them as to why the drawback granted should not be recovered in the absence of receipt of sales proceeds for the goods exported. The fact remains that the petitioner had realised the sale proceeds, but there was some delay in obtaining the bank certificate of export and realisation. Though personal hearing was fixed to adjudicate the show cause notice, by then the petitioner's premises was shifted and they had no notice of the proceedings and the 3rd respondent passed an order on 14.07.2004 confirming the demand raised on the petitioner. On the petitioner receiving the copy of the order passed by the 3rd respondent in the new address, they addressed the Deputy Commissioner of Customs [Drawback], vide letter dated 03.09.2004, submitting the bank certificate of export and realisation. After nearly a month, they received a reply stating that the petitioner has to file the appeal. But by then, the period of limitation was over and the Commissioner [Appeals] having no power to extend the period of limitation, dismissed the appeal. This order was affirmed by the 1st respondent on a revision filed by the petitioner, which order dated 25.07.2005 is impugned in this Writ Petition. Thus, the petitioner has been nonsuited on technical grounds.

4. The original authority had no opportunity to examine as to the correctness of the stand taken by the petitioner that the bank certificate of export and realisation has been obtained by them. Since it was an ex parte proceedings, the appellate and the revisional authority did not embark upon such exercise and they dismissed the appeal/revision on technical grounds. Thus, the petitioner having come into possession of the bank certificate of export and realisation should not be nonsuited on technical grounds and therefore, this Court is inclined to issue

necessary directions in this regard.

5. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the 3rd respondent for fresh consideration, who shall take into consideration the bank certificate of export and realisation dated 13.12.1997, examine the facts and if the petitioner has realised the sale proceeds, then, appropriate orders be passed dropping the proceedings. This direction be complied with within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1.Joint Secretary to the Govt. of India,
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Customs House, No.60, Rajaji Salai,
Chennai-1.

4.The General Manager,
Reserve Bank of India,
Chennai.
+1 CC to Mr.S. Murugappan, advocate sr 60018.
+1 Cc to Mr.A.P. Srinivas, Advocate sr 60329.

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SP(11/09/2017)