BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.11.2018**

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.228 of 2015

M/s.Texport Industries Private Ltd.,
represented by its
General Manager -Shipping
154, 3rd Cross, 5th Main,
Yeshwanthpur Indl.Suburb,
Bangalore 560 022. ... Petitioner

Vs.

1.Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004.

2.The Assistant Commissioner of Customs (Drawback)
Custom House,
Tuticorin-628 004. ... Respondents

PRAYER: Petition filed under Article 226 of Constitution of India to issue any writ or order or direction most particularly in the nature of Writ of Mandamus directing the respondents to sanction the duty drawback amount of Rs.14,14,815 in respect of shipping bill numbers (i)2043897 dated 21.12.2010, (ii) 2045484 dated 22.12.2010, (iii) 2062255 dated 23.12.2010, (iv) 2418579 dated 03.02.2011 (v) 2537885 dated 17.02.2011, (vi) 2543034 dated 17.02.2011, (vii) 2567222 dated 19.02.2011, (viii) 2576513 dated 21.02.2011 (ix) 2581200 dated 21.02.2011 after retaining an amount of Rs.7,15,378/- which represents the demand made vide demand notice no.VIII/20/670/2011-DBK dated 15.04.2014 as security.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mr.S.Gurumoorthy
Senior Panel Counsel

ORDER

****

The writ petitioner is an exporter of garments. He was entitled to a duty drawback claim to the tune of Rs.14,14,815/-. This amount is in respect of the nine shipping bills which are of the year 2010-2011. But then, there is a dispute between the writ petitioner and the department in respect of a duty drawback claim of Rs.7,15,378/-. Orders have been passed to that effect. The petitioner herein has filed a revision before the Revisional Authority and the revision is also still pending. Therefore, all that the writ petitioner wants is that the petitioner can be disbursed with the remaining amount after deducting the amount of Rs.7,15,378/- subject to the outcome of the revision proceedings filed by him. Since, the said request was not accepted, this writ petition has been filed.

2.The respondents have filed their counter and paragraph -6 of the counter reads as follows:

> *"6.The Assistant Commissioner (Drawback) has not illegally withheld the drawback amount of Rs.14,14,815/- which owes to the petitioner for the 9 Shipping Bills mentioned in the Writ Petition. The Assistant Commissioner (BRC) confirmed the Demand amount of Rs.7,15,378/- vide his order in Original No.882/2014 dated: 3.7.2014 for the non realization of the sale proceeds for the 3 Shipping Bills referred in the Writ Petition. Aggrieved by the above order the exporter has preferred an Appeal with the Commissioner (Appeals) and the Commissioner (Appeals) Vide his Order in Appeal in No.110/2014-TTN (CUS) has also upheld the order of lower adjudicating authority and rejected the Appeal preferred by the Exporter. Now the petitioner has filed an Appeal with the Revision Authority- New Delhi, on which decision is pending."*

3.Therefore, I am of the view that the duty drawback claim amount payable to the writ petitioner after retaining the amount of Rs.7,15,378/- ought to be disbursed. Since, the respondents could not have withheld the duty drawback amount of Rs.14,14,815/- on the ground that there is a confirmed demand against the writ petitioner in respect of the duty drawback of Rs.7,15,378/-. I am of the view that the writ petitioner will also be entitled to interest.

4.In this view of the matter, the respondents are directed to disburse the duty drawback amount of Rs.6,99,437/- with interest, to be calculated as per Section 75A of the Customs Act, 1962.

5.Accordingly, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar(CS-II)

To

1.Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004.

2.The Assistant Commissioner of Customs (Drawback)
Custom House,
Tuticorin-628 004.

+1 CC To MR.HARI RADHAKRISHNAN, Advocate SR. NO.94580
+1 CC To MR.S.GURUMOORTHY, Advocate SR. NO. 94644

ORDER MADE IN
W.P.(MD).No.228 of 2015
08.11.2018

PNN
TR/SV/SAR-II(12.11.2018)3P 5C