IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.5480 of 2009

Best Fabrics by its Proprietor,
S.Vaidhyanathan,
61/62 Chamiers Road, R.A. Puram,
Chennai - 28. ...Petitioner

Vs

1.The Commissioner of Customs(Export),
Customs House,
60, Rajaji Salai, Chennai -1.

2.The Director General of Foreign Trade,
Ministry of Commerce and Industries,
Department of Commerce,
Udyog Bhavan, New Delhi - 110 001.

3.Central Board of Excise and Customs,
Union of India, Ministry of Finance,
Department of Revenue, New Delhi -1. ... Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of proceedings of the first respondent made in F.No.S.Misc.01/06 DBK-ED1 dated 17.8.2007 and quash the same and further direct the respondents to grant Duty Draw Back for the exports already made by petitioner, as claimed in the Petitioner's communication dated 8.3.2006.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.R.Loganathan

For Respondents: Mr.A.P.Srinivas,
Senior Standing Counsel

# O R D E R

Heard Mr.B.Kumar, learned Senior Counsel appearing for Mr.R.Loganathan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing counsel for the respondents.

2.The challenge in this Writ Petition is to an order dated 17.08.2007 passed by the Commissioner of Customs (Export), arrayed as R1 rejecting the request of the petitioner for conversion of Advance Licence shipping bills to Drawback shipping bills.

3.A perusal of the impugned order makes it unnecessary for me to refer to any of the contentions raised by the petitioner in the affidavit except the specific ground to the effect that the impugned order is wholly non-speaking and does not reveal the mind of R1 as to the reasons or rationale for rejection of the petitioners' claim. The order states as follows:

> ' Please refer to your letter dated 08.03.06 addressed to the Chief Commissioner of Custom, Chennai on the above captioned subject. In this context, I am directed to inform you that your request for conversion of Advance Licence shipping bills to Drawback shipping bills, has been considered keeping in view the guidelines and conditions as laid down in CBEC circular No.4/2004 dated 16.01.04.
>
> As the terms and conditions of allowing such conversions have not been complied with, it has not been found possible to allow such conversion and accordingly same has been rejected by the Commissioner.
>
> This is for your kind information please.'



4.A Full Bench of the Supreme Court in the case of Mohinder singh Gill and another V. The Chief Election Commissioner, New Delhi and others (AIR 1978 SC 851) considers a similar situation where the impugned order, in that case as well, was wholly non-speaking and did not contain any reasons in support of the conclusion. At paragraph 8, the Full Bench states as follows:

> '8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by

the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhands Bhanji (AIR 1952 SC16) (at p.18):

> "Public orders publicly made, in exersise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public order made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself"

Orders are not like old wine becoming better as they grow older'

5. The observations of the Bench in the aforesaid matter are equally applicable to the case on hand, since R1, before me, has furnished reasons supplementing the impugned order only by way of counter.

6. For the aforesaid reasons, the impugned order fails and is set aside. The first respondent will issue a notice to the petitioner calling upon it to appear for a personal hearing and pass orders de novo on the request of the petitioner for conversion of Advance Licence shipping bills to Drawback shipping bills. The petitioner is granted liberty to file supporting documents, if any in addition to advancing oral submissions. After conclusion of personal hearing, a speaking order on merits shall be passed by the first respondent within a period of four (4) weeks.



7. This Writ Petition is allowed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Customs(Export),
Customs House,
60, Rajaji Salai, Chennai -1.

2.The Director General of Foreign Trade,
Ministry of Commerce and Industries,
Department of Commerce,
Udyog Bhavan, New Delhi - 110 001.

3.Central Board of Excise and Customs,
Union of India, Ministry of Finance,
Department of Revenue, New Delhi -1.

+1cc to Mr.R.Loganathan, Advocate Sr.88947
+1cc to Mr.A.P.Srinivas, Advocate SR.88809

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spd[co]
srg 05/12/2019