IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.24244 OF 2013
AND
M.P.NO.1 OF 2013

M/s. Nana Desi Ainnurruvar
New No.4, Old No.12, Norton First Street,
Mandavelipakkam, Chennai - 600 028.
Represented by its
Authorized Signatory Mr.Seshagiri

... Petitioner

Vs

1. The Revisionary Authority
and Joint Secretary to the
Government of India,
Ministry of Finance Department of Revenue,
14, Hudco Vishal Building, B Wing,
6th Floor, Bhikaji Cama Place, New Delhi - 110 066.

2. The Commissioner of Customs (Appeals)
6/7, A.T.D.Street, Race Course Road,
Coimbatore - 641 018.

3. The Deputy Commissioner of Customs
Inland Container Depot, CONCOR,
Vidyalam, Palladam Main Road,
Veerapandi (PO), Tirupur - 641 605. ... Respondents

सत्यमेव जयते

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records connected with Order No.46/2013 - Cus dated 05.02.2013, passed by the First Respondent herein, and to quash the same, in so far as it confirms the penalty imposed u/s 117 of the Customs Act on the Petitioner herein.

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For Petitioner : Mr.V.Sreenivasan
for Mr.N.Viswanathan

For Respondents : Mr.S.R.Sundar
Standing Counsel

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ORDER

The Petitioner is aggrieved by the impugned order passed by the First Respondent rejecting the Revision Application filed by the Petitioner under Section 129 DD of the Customs Act, 1962. By the impugned order, the First Respondent has affirmed the orders of the Second and Third Respondents imposing penalty and upholding penalty of Rs.25,000/- on the Petitioner.

2. The Petitioner had exported goods and had filed duty draw back claims under provisions of the Customs, Central Excise Duties and Service Tax Draw Back Rules, 1995 and claimed a total draw back due of Rs. 12,01,874/-. There was some delay in getting foreign remittance and therefore, a Show Cause Notice dated 27.08.2010 was issued to the Petitioner to show cause as to why penalty under Section 117 of the Customs Act should not be imposed on the Petitioner.

3. The Petitioner replied to the Show Cause Notice and appeared before the original authority and the Third Respondent by an order dated 16.05,2011 bearing a reference order in Original No.32 of 2011, dropped the proceedings but at the same time has imposed penalty under Section 117 of the Customs Act, and the reason given for imposing penalty is that though the Petitioner was given opportunity to produce Bank Realization Certificate (BRC) within stipulated time, neither the Petitioner nor their authorized representative appeared or filed any reply within stipulated time and therefore, penalty was imposable for non-production of BRC within stipulated time.

4. On further appeal, the Second Respondent-Commissioner (Appeals) rejected the appeal filed by the Petitioner on the ground that though due draw back amount as an export incentive was granted immediately to the Petitioner after export, yet the Petitioner did not submit BRCs in time which shows their scant regard for statutory duties cast on it. The Second Respondent thus upheld penalty imposed under Section 117 of the Customs Act, 1962.

5. On further revision, the First Respondent has rejected the revision filed under Section 129 DD of the Customs Act, 1962 by stating that on a plain reading of the provision, it clears that for contravening any provisions of Customs Act where no express penalty is provided elsewhere, penal action shall be attracted under this section. The First Respondent-Revisionary Authority has further noted that the Petitioner has submit BRCs after stipulated time for period of one year and therefore, the penalty is to be imposed on the Petitioner under Section 117 of the Customs Act was right.

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6. The learned counsel for the Petitioner submits that penalty under Section 117 of the Customs Act will apply only where there is any failure or violation of any provisions of the Customs Act and the alleged failure in submitting BRCs in time in terms of the Customs, Central Excise Duties and Service Tax Draw Back Rules, 1995 would not attract penalty under Section 117 of the Customs Act, 1962. Defending the impugned orders, Mr. S.R. Sundar, learned standing counsel submits that as per the Rule 16(A) (2) of the aforesaid rules if the exporter fails to produce evidence in respect of realization of export proceeds within a period allowed under the Foreign Exchange Managament Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs/the Deputy Commissioner of Customs, as the case may be, shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the aforesaid period of thirty days, the Assistant Commissioner to customs/the Deputy Commissioner of Customs, as the case may be shall pass an order to recover the amount of draw back paid to the claimant and such exporter shall pay the amount within a period of thirty days from the receipt of the aforesaid order. He therefore submits that since the Petitioner delayed in submitting BRC in time, penalty under Section 117 of the Customs Act has been correctly imposed.

7. Heard the learned counsel for the Petitioner and the Respondents and perused the impugned order and records.

8. In this case a Show Cause Notice was issued to the Petitioner on 27.08.2010. The Petitioner had failed to file the relevant BRCs/extensions from Reserve Bank of India in time. Therefore, the Third Respondent was justified in issuing the above mentioned Show Cause Notice to the Petitioner. The fact however, remains that the Third Respondent has come to a conclusion that there was export realization though belatedly and therefore dropped the proceeding but at the same time has imposed of penalty for late realization of the export proceeds. Section 117 makes it very clear that penalty is to be imposed where there is failure to comply or where there is a violation in law, penalty can be imposed. The exporters do face difficulties in realization of export proceeds and therefore not all cases where there is a delay in producing BRCs penalty is to be imposed. Further, imposition of penalty may result in denial of export incentive indirectly in several cases.

9. I am satisfied that this is not a fit case for imposition of Rs.25,000/- as there is a realization of the export proceeds. However, since there is a failure of penalty imposed under

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Section 117 of the Customs Act, penalty of Rs.25,000/- is reduced to Rs.5,000/-.

10. This Writ Petition stands disposed of as above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Revisionary Authority
and Joint Secretary,
Government of India,
Ministry of Finance Department of Revenue,
14, Hudco Vishal Building, B Wing,
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Vidyalam, Palladam Main Road,
Veerapandi (PO), Tirupur - 641 605.

+1cc to Mr.N.Viswanathan, Advocate, S.R.No.105992
+2cc to Mr.S.R.Sundar, Advocate, S.R.No.105712

सत्यमेव जयते

W.P.No.24244 of 2013
and
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SPD(CO)
CS/03/02/2020

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