IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29193 of 2019
and
W.M.P.No.28998 of 2019

M/s. Boston Leather Exports,
Represented by its Proprietor,
Shri V.M.Firdose Ahmed
No.14/16. M.V.Badran Street,
Periamet, Chennai - 600003. ...Petitioner

Vs.

1. The Assistant Commissioner of Customs (DBK), (XOS),
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400099.

2. The Assistant Commissioner of Customs (Export),
New Custom House,
Meenambakkam, Chennai - 600027. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents, particularly, the first respondent to remove an alert raised against the petitioner's Importer Exporter Code No.0404028080 in the Customs EDI System in F.No.S/3-Misc/DBK(XOS)115(1407)/2015-16,ACC//SIIB(X)/GEN 68/2018-19 SIIB (X) ACC.

For Petitioner : Mr.G.Derrick Sam
For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner seeks for a Mandamus, directing the respondents, particularly, the first respondent to remove an alert raised against the petitioner's Importer Exporter Code No.0404028080 in the Customs EDI System in F.No.S / 3 - Misc / DBK (XOS) 115 (1407) / 2015 -16,ACC//SIIB(X)/GEN 68/2018-19 SIIB (X) ACC.

2. The case of the petitioner in short is as follows :-

(a) The petitioner is a regular exporter of finished leather to various countries. In the course of their business, they filed shipping bill Nos. 5128734 dated

25.04.2013 and 5128742 dated 25.04.2013 at Mumbai Air Customs and claimed duty drawback. The first respondent sanctioned drawback for a sum of Rs.4,29,089/- in respect of the said shipping bills. The first respondent thereafter, issued a show cause notice dated 18.06.2016 to the petitioner to show cause as to why an amount of Rs.4,29,089/- should not be recovered from the petitioner under Rule 16 of the Customs Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2006 along with applicable interest on the ground that the petitioner has not realized sale proceeds of goods exported and no evidences were produced for the same. The said show cause notice was adjudicated by the first respondent vide Order-in-Original dated 31.03.2017 without giving an opportunity of personal hearing to the petitioner.

(b) It is the specific case of the petitioner that neither the show cause notice nor the Order-in-Original was served on them at any point of time. They came to know about the issuance of Order-in-Original through a letter dated 10.01.2019 of Axis Bank, Purasaiwalkkam Branch, Chennai, stating that a sum of Rs.4,50,089/- was debited from the petitioner's bank account. Thereafter, an alert was also raised by the first respondent in the Customs EDI System to the effect that "since the pending dues are not paid, NOC from AC DC-TRC required to clear the consignment". The petitioner through letter dated 11.02.2019 requested the first respondent to permit them to export their consignment. However, even after realization of the amount confirmed in the Order-in-Original, the said alert continued to exist in the EDI System. The petitioner sent a letter dated 06.03.2019 to the first respondent to remove the alert and requested the certified copy of Order-in-Original dated 31.03.2017. Thereafter, on 21.03.2019, the petitioner's Advocate filed an application under the Right to Information Act, 2005 for obtaining a copy of the Order-in-Original. Subsequently, a copy of the said Order-in-Original dated 31.03.2017 and Demand-cum-Show cause notice dated 18.06.2016 was received by the petitioner's Advocate on 26.04.2019. Aggrieved against the said Order-in-Original dated 31.03.2017, the petitioner filed an appeal before the Commissioner of Customs (Appeals), Mumbai Zone – III. The Appellate Authority dismissed the appeal on 24.05.2019, as not maintainable, since it was not filed within 90 days from the date of Order-in-Original. Aggrieved against the same, the petitioner filed a Revision Application before the Revision Authority, Mumbai and the same is pending for disposal. Meanwhile the petitioner filed a shipping bill No.5365663 dated 05.07.2019 with the second respondent. However, in view of the alert appeared in the Custom EDI System against the petitioner, the above said export could not be made. Therefore, the present writ petition is filed with a relief as stated supra.

3. The learned counsel appearing for the petitioner after reiterating the above contentions further stated that since the first respondent having realized the sum of Rs.4,50,089/- already from the bank account maintained by the petitioner, is not justified in continuing the alert in the EDI System, which totally paralyzed the petitioner's business. He further submitted that the liability of the petitioner has not been finally determined, since the revision filed by them is still pending before the Revisional Authority.

4. Per contra, the learned senior standing counsel appearing for the Revenue submitted that since the petitioner is yet to pay a sum of Rs.4,06,988/- towards the interest till 31.01.2019, the alert in the EDI System exists and once the petitioner discharge such liability, the said alert will be removed. At the same time, the learned senior standing counsel is not disputing the fact that a sum of Rs.4,50,089/- was realized from the petitioner's bank account towards the drawback amount and penalty.

5. Heard both sides and perused the materials placed before this Court.

6. It is seen that an Order-in-Original dated 31.03.2017 was passed against the petitioner, confirming the demand of drawback amount of Rs.4,29,089/- on the reason that the petitioner did not produce the evidence to show that the sale proceeds (foreign exchange) in respect of the goods exported have been realized within the time limit prescribed under the Foreign Exchange Management Act, 1999. The Adjudicating Authority also imposed penalty of Rs.21,000/- on the petitioner under Section 117 of the Customs Act, 1962.

7. It is the specific case of the petitioner that neither the show cause notice nor the Order-in-Original was served on the petitioner before he got the same by way of application filed under Right to Information Act.

8. The above said claim made by the petitioner is not an issue to be considered in this case, as admittedly, the petitioner has filed an appeal before the Appellate Authority against the said Order-in-Original and that he further filed a Revision before the Revisional Authority, aggrieved against the order passed in the Appellate Authority in dismissing the appeal. It is not in dispute that the said revision is still pending before the Revisional Authority to consider the claim made by the petitioner and pass orders on the same on merits and in accordance with law. Thus, this Court, is not expressing any view on the merits of the matter. However, the limited prayer sought for in this writ petition is for

removing the alert made in the Customs EDI System. There is no dispute to the fact that the Revenue has already recovered the duty drawback amount of Rs.4,06,988/- and penalty. The first respondent is refusing to lift the alert only on the reason that the petitioner is yet to pay interest.

9. Considering the fact that the liability of the petitioner to pay the duty drawback, penalty and interest has not attained its finality, as admittedly, the revision filed against the orders of Authority is still pending, this Court is of the view that the interest of both parties will be protected, if the following order is passed without prejudice to the contentions of both the parties before the Revisional Authorities. Accordingly, this writ petition is disposed of with the following terms :-

(a) The petitioner shall furnish a personal bond for a sum of Rs.4,06,988/- before the first respondent, representing the above said interest amount, within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such personal bond, the respondents are directed to remove the alert, as exists against the petitioner in the Customs EDI System immediately.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Customs (DBK), (XOS),
Air Cargo Complex, Sahar,
Andheri (East), Mumbai - 400099.

2. The Assistant Commissioner of Customs (Export),
New Custom House,
Meenambakkam, Chennai - 600027.

+1cc to Mr.Hari Radhakrishnan , Advocate SR.No. 96204
+1cc to Mrs.Hema Muralikrishnan , Advocate SR.No. 95508

W.P.No.29193 of 2019

A.SK(20/11/2019)