IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.A.No.695 of 2021

Adani Enterprises Limited,
Represented by its Associate
General Manager, F&A Saurabh Shah ... Appellant

Vs

The Assistant Commissioner of
Customs (Drawback),
Office of the Commissioner of
Customs (Sea-Export), Customs House,
60, Rajaji Salai, Chennai - 1. ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 11.01.2021 passed by the learned Judge in W.P.No.557 of 2021 on the file of this Court.

Prayer in W.P.No.557 of 2021:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records relating to Show Cause Notice bearing F.No.S.Misc. 63 / 2010 - DBK. BRC. dated 10.08.2010 issued by the Respondent quash the same as arbitrary and illegal.

For Appellant : Mr.Joseph Prabakar

For Respondent: Mrs.R.Hemalatha, SSC

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.Joseph Prabakar, learned counsel for the appellant and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the respondent.

2. This writ appeal has been filed challenging the order passed in W.P.No.557 of 2021 filed by the appellant herein for issuance of a Writ of Certiorari to quash the Show Cause Notice dated 10.08.2010.

3. The writ petition has been dismissed on the ground that there is absolutely no trigger for the writ petitioner to approach this Court and there is no cause of action for filing the writ petition.

4. We fully agree and endorse the view taken by the learned Writ Court. We know the facts of the case, wherein the respondent issued a show cause notice dated 10.08.2010 under Rule 16A of the Customs Excise Duties and Service Tax Drawback Rules, 1995 ('the Rules' for brevity) pointing out that in terms of the provisions of Section 75(1) of the Customs Act, 1962 (hereinafter referred to as 'the Act') read with Sub-Rule 16A(1) of the said rules, where an amount of drawback has been paid to an exporter, but the sale proceeds in respect of such export goods have not been realized within the time limit under the Foreign Exchange Management Act (FEMA) 1999, such drawback amount is to be recovered. It is further pointed out that proof of realization of export proceeds (BRCs/ Negative statements) for the drawback Shipping Bills pertaining to the exports done to the Chennai seaport have not been submitted to the office of the respondent as required under Board Circular No.05/2009-Cus., dated 02.02.2009 and Office Public Notice No.44/2009, dated 15.03.2009.

5. Therefore, the appellant was directed to show cause within 30 days of the receipt of the notice as to why the said amount shall not be recovered from them in terms of Rule 16A(2) & (3) read with Rule 16 of Drawback Rules, 1995. The appellant was further informed that they may send a reply and/or appear for personal hearing with the relevant documents before the respondent on any of the working days, if they desire so, within 30 days of the receipt of the show cause notice. Further, the appellant was informed that if no submission was made by them within the said period, the case would be set ex-parte on the basis of available records and documentary evidence without making any further reference to the appellant. Further, it is stated that the notice was issued without prejudice to any action that may be taken under the Customs Act or any other law for the time being in force.

6. The appellant, by reply dated 23.08.2010 while acknowledging the receipt of the notice, submitted that they have exported the goods covered under the said Shipping Bills and have received the sale proceed of the same from the foreign

buyers and have also received certificates from the banks certifying realisation of export bills in respect of the said exports and therefore, have complied with the provisions of Section 75 of the Act read with Rule 16A of the Rules and the provisions of FEMA, 1999. The appellant submitted Bank Certificates of Export Realisation in respect of the said Shipping Bills for perusal of the respondent and requested him to take the same on record.

7. We find that the reply along with enclosures said to have been given, have been received in the office of the respondent on 23.08.2010, as could be seen from the date seal. The appellant did nothing thereafter and in the year 2020, filed the writ petition. As observed by us earlier, the learned Writ Court was fully satisfied in one way or the other that there was no cause of action to file a Writ of Certiorari to quash the show cause notice especially when the appellant submitted to jurisdiction of the respondent and said to have fulfilled what was called for from them in the show cause notice.

8. The learned counsel for the appellant submitted that another notice was issued by the Assistant Commissioner of Customs, Tuticorin, which was challenged by the appellant before the Madurai Bench of this Court in W.P.(MD).No.128 of 2021 and it was admitted on 07.01.2021. It is further submitted that when the said writ petition was pending, the Assistant Commissioner of Customs, Tuticorin, by Order-in-Original No.160/21 BRC dated 16.02.2021 held that the appellant has produced the Chartered Accountant Certificates, wherein it is certified that the export proceeds for export shipments made during the period from 01.01.2004 to 31.12.2008 have been realized fully and therefore, the appellant has fulfilled his post-export liabilities as required under Rule 16A of the said Rules read with Section 75 (1) of the Act and taking the facts into consideration, a lenient view was taken in not imposing the penalty under Section 117 of the Act and accordingly dropped all the adjudication proceedings relating to the show cause notice No.839/10 dated 26.05.2010. The said Order-in-Original was pressed into service by the learned counsel for the appellant stating that the case on hand is also identical, wherein the appellant has produced Bank Certificates and export realization.

9. Further, since the matter is now pending before the respondent, we do not propose to make any observation or render any finding with regard to the compliance said to have been done by the appellant as it is for the respondent to proceed in accordance with law.

10. At this juncture, the learned Senior Standing Counsel appearing for the respondent submitted that the proceedings

would be finalized by the respondent within two weeks and the appellant should cooperate with the proceedings.

11. For the above reasons, while confirming the finding rendered by the learned Single Bench, the writ appeal stands disposed of with a direction to the respondent to pass orders on merits and in accordance with law, taking note of the reply submitted by the appellant dated 23.08.2010. In case any further clarification is required, the respondent shall issue a notice to the appellant and afford an opportunity of personal hearing to the authorised representative of the appellant and proceed to pass orders on merits and in accordance with law. This direction shall be completed within a period of 3 weeks from the date of receipt of a copy of this judgment and we make it clear that the appellant shall cooperate in the early conclusion of the proceedings. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

HVK

To

The Assistant Commissioner of Customs (Drawback),
Office of the Commissioner of
Customs (Sea-Export), Customs House,
60, Rajaji Salai, Chennai - 1.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.15658

W.A.No.695 of 2021

GSM(CO)
TE (23/04/2021)