



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **29.07.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) Nos.10363 & 12925 of 2021

and

WMP (MD) Nos.8036 & 10005 of 2021

M/s.Gold Processors,
Rep. by its Proprietor
Abhishek Dhawan

... Petitioner in both WP's

Vs.

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

2.The Assistant Commissioner of Customs (Exports),
Custom House, New Harbour Estate,
Tuticorin - 628 004.

3.The Assistant/Deputy Commissioner of Customs (SIIB),
Custom House, New Harbour Estate,
Tuticorin - 628 004.

... Respondents in both WP's

PRAYER IN WP (MD) No.10363 OF 2021: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents herein to grant permission to shutout the cargo / taking back the cargo to their premises and to release the goods comprising of "Readymade Garments" presented for the export vide Shipping Bill Nos.1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, all dated 15.04.2021.

PRAYER IN WP (MD) No.12925 OF 2021: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in C.No.VIII/48/35/2021-SIIB/OR No.05/2021-22, dated 08.07.2021 issued by the third respondent herein and quash the same and direct the respondents to grant permission to shutout the cargo / taking back the cargo to their premises and to release the goods comprising of "Readymade Garments" presented for the export vide Shipping Bill Nos.1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, all dated 15.04.2021, without insisting for execution of Bank Guarantee for 25% of the value.

For Petitioner

: Mr. Saurabh Kapoor for
Mr.A.K.Jayaraj

For Respondents

: Mr.G.Ramanathan
for Mr.R.Aravindan



COMMON ORDER

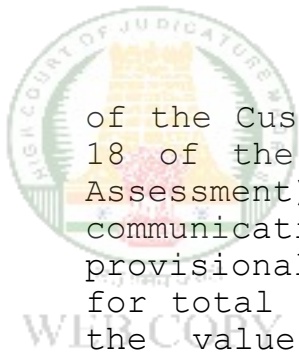
The Writ Petitions have been filed to quash the impugned order passed by the 3rd respondent in C.No.VIII/48/35/2021-SIIB/OR No.05/2021-22, dated 08.07.2021 and direct the respondents to grant permission to shutout the cargo / taking back the cargo to their premises and to release the goods comprising of "Readymade Garments" presented for the export vide Shipping Bill Nos.1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, all dated 15.04.2021, without insisting for execution of Bank Guarantee for 25% of the value.

2. The short facts of the case are as follows:-

(i) The petitioner submits that they are in the trade of Export of Readymade Garments. The petitioner has been allotted with Import-Export Code No.BCRPD0408H issued by the office of the DGFT, attached to the Ministry of Commerce. The petitioner also registered under GST and also assessed to Income Tax. The petitioner submit that, they had received Orders for Export of Readymade Garments. For the purpose of export of the aforesaid goods filed Shipping Bills Nos. 1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, dated 15.04.2021 at the port of New Customs House, Tuticorin.

(ii) The petitioner submitted all reliable and necessary documents such as Commercial Invoice, Packing List and E way Bill before the Respondent Customs Officers. However the Respondent Officers without considering the Export Invoices, as well as Purchase Invoices detained the goods meant for export vide the Six Shipping Bills. That since the goods were not permitted clearance, nor any reason for delay was ever intimated, the petitioner vide its email/letter dated 01.05.2021, 05.05.2021 & 10.05.2021 requested the Respondents to allow export of the goods, since the goods are incurring heavy demurrage and detention charges. The Petitioner telephonically requested for early clearance of the goods. However the respondent No.3, without considering the request for early clearance of the goods for export ordered for seizure of the same vide seizure memo dated 11.05.2021 on the ground that the goods were sub standard, overvalued with the intention to claim higher Drawback and other benefits.

3. The learned counsel appearing for the petitioner would submit that on 04.06.2021 the petitioner made a request to the respondents to permit the goods to be taken back to their premises due to cancellation of export orders and came before this Court to grant permission to shutout the cargo and take back the goods in W.P (MD)No.10363 of 2021. However, the respondents have not ordered for release of the goods, which caused prejudice to the petitioner. Instead, the 3rd respondent vide impugned letter in C.No.VIII/48/35/2021-SIIB/OR No.05/2021-22, dated 08.07.2021, insisted for execution of Bank Guarantee for 25% of the value. The learned counsel for the petitioner would further submit that



of the Customs Act, 1962, in adherence to the provisions of Section 18 of the Customs Act, 1962 read with Customs (Provisional Duty Assessment) Regulations, 2011. Such being the case, the communication of the 3rd respondent, dated 08.07.2021 allowing provisional release of the goods on the condition of furnishing bond for total declared value of the goods and Bank Guarantee for 25% of the value, as security, is contrary to the said provision. Therefore, the petitioner is before this Court by filing a W.P(MD) No.12925 of 2021, for a Certiorarified Mandamus.

4. The Court heard the submissions made by the learned counsels appearing on either side and perused the materials available on record.

5. Admittedly, now the petitioner is not in a position to export the goods due to cancellation of the export order. The goods are berthed in Tuticorin Port and kept idle and because of that, the demurrage and container charges has been mounting heavily. Since the export order has been cancelled, the petitioner wants to take back the cargo to their premises, but the 3rd respondent insisting the petitioner for bank guarantee for 25% of the value as security for provisional release of the goods. In the considered opinion of this Court, the question of providing bank guarantee does not arise, when the petitioner wanted to take back the goods, due to cancellation of the export order.

6. In view of the above stated position, the communication in letter C.No.VIII/48/35/2021-SIIB/OR No.05/2021-22, dated 08.07.2021 issued by the third respondent is quashed and the respondents are directed to permit the petitioner to take back the cargo to their premises, comprising of "Readymade Garments" presented for the export vide Shipping Bill Nos.1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, all dated 15.04.2021, without insisting Bank Guarantee, forthwith.

7. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

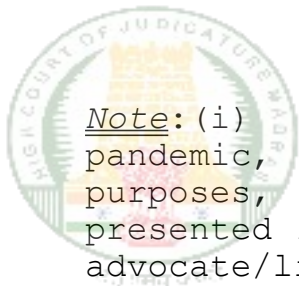
Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

MPK



Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

- 1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 2.The Assistant Commissioner of Customs (Exports),
Custom House, New Harbour Estate,
Tuticorin - 628 004.
- 3.The Assistant/Deputy Commissioner of Customs (SIIB),
Custom House, New Harbour Estate,
Tuticorin - 628 004.

+2 CC to M/s.A.K.JEYARAJ, Advocate (SR-24501,24502[F] dated 29/07/2021)

**W.P(MD)Nos.10363 & 12925 of 2021
29.07.2021**

RK (09.08.2021) 4P 6C