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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.1070 OF 2022

AND

W.M.P.NOS.1133 & 1134 OF 2022

(THROUGH VIDEO CONFERENCING)

Mohana Ganesh,
W/o.M.Ganesh Kumar,
Proprietrix, M/s.Fangle Exports,
11/8A, Shibiraj Niraivagam Rajendra,
Nagar Extension, Narasimmanaikenpalayam,
Coimbatore - 641 031.

... Petitioner

Vs.

The Assistant Commissioner of Customs,
BRC-DBK,
60, Rajaji Salai, Custom House,
Chennai - 600 001.

... Respondent

Prayer:

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to Order-in-Original No.74316 of 2020 dated 28.02.2020 passed by the respondent, quash the same and consequently direct the respondent to provide the petitioner with fair opportunity and hearing in respect of Show Cause Notice dated 30.08.2017.

For Petitioner : Mr.Niranjan Rajagopalan
for M/s.G.R.Associates

For Respondent : Mr.Pramod Kumar Chopda
Senior Standing Counsel

ORDER

Mr.Pramod Kumar Chopda, learned Senior Standing Counsel takes notice on behalf of the respondent.



2. The petitioner has challenged the impugned Order-in-Original No.74316 of 2020 dated 28.02.2020. It is the specific case of the petitioner that the notices preceding the order and the order was not received in time and therefore the demand confirmed in the Impugned Order is liable to be quashed.

3. It is submitted by the learned counsel for the petitioner that the petitioner has required proof to substantiate that the petitioner had indeed received the export proceeds from the exports made by the petitioner during the period for which the petitioner had claimed duty draw back to the provisions of the Customs Act, 1962 read with relevant Rules as in force during the period in dispute.

4. The learned counsel for the petitioner further submits that since the order has been passed in Violation of Principles of Natural justice, the Impugned Order is unsustainable.

5. Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that there is an admission in Paragraph 5 of the affidavit that the impugned order dated 28.02.2020 was received by the petitioner on 06.10.2020 and still the petitioner did not take any steps for filing an appeal against the aforesaid order.

6. The learned Senior Standing Counsel further submits that the writ petition cannot be entertained as there are several disputed question of fact and cannot be adjudicated in this writ petition.

7. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent. I have perused the impugned order and the affidavit filed in support of the present writ petition.

8. The petitioner claims to have received the exports proceeds from the exports made by the petitioner in respect of 10 shipping bills. However, the petitioner has not filed these documents before the Original Authority namely the The Assistant Commissioner of Customs, the respondent herein who has proceeded to pass the impugned order.

9. Since, the issue would require a detailed consideration on facts, I am inclined to dispose this writ petition by giving liberty to the petitioner to file an appeal within a period of thirty days from the date of receipt of a copy of this order before the Appellate Commissioner under Section 128 of the Customs Act, 1962.



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10. If such an appeal is filed by the petitioner within such time, the Appellate Commissioner shall entertain the appeal and dispose the same in accordance with law and on merits within a period of three months from the date of receipt of a copy of this order.

11. Pending such appeal, the petitioner is required to deposit 7.5% of the disputed tax as is contemplated under Section 129E of the Customs Act, 1962. Pending disposal of the appeal, no recovery proceedings shall be initiated by the respondent.

12. This writ petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Assistant Commissioner of Customs,
BRC-DBK,
60, Rajaji Salai, Custom House,
Chennai - 600 001.

+1cc to Mr.Pramod Kumar Chopda, Senior Standing Counsel,
S.R.No.5082

W.P.No.1070 of 2022
and
W.M.P.Nos.1133 & 1134 of 2022

RK(CO)
PM/28/02/2022