IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.4964 OF 2022
AND
W.M.P.NOS.5097 & 5099 OF 2022

Eden Exports Company
...Petitioner

-Vs-

Deputy Commissioner of Customs (BRC-DBK)
Chennai- IV
Chennai-600 001
...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of Order-in-Original No.85459/2021 date 27.03.2021 passed by the Respondent and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records of Order-in-Original No.85459/2021 date 27.03.2021 passed by the Respondent and quash the same.

2. With regard to the export under taken by the petitioner for the years from 2004 to 2007, it is the case of the Revenue that the export proceeds pertaining to the consignment exported by several shipments have not been realised. Therefore, in order to recover the duty drawback availed by the petitioner for a sum of Rs.79,23,084/-, according to the Revenue, a show cause notice was issued and the same has not been responded by the petitioner.

3. Therefore, the Revenue proceeded to decide the case exparte based on the available records and accordingly they issued the order dated 27.03.2021, whereby they sought to recover the availed duty drawback amounting to Rs.79,23,084/-. Challenging the same, the present writ petition has been filed.

4. Mr.Adithya Reddy, learned counsel for the petitioner would submit that, though it was the claim of the Revenue that a show cause notice was issued, no such show cause notice has been received by the petitioner, as the petitioner closed the business sometime in the year 2011 and therefore at the given address, nothing had come to the petitioner.

5. Moreover, insofar as the personal hearing is concerned, it is the claim of the Revenue that they put the notice for personal hearing in the web portal formally for so many exporters like the petitioner. Therefore, effectively since no notice has been issued before passing the impugned order, the impugned order is vitiated, he contended.

6. Heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondent Revenue, who would submit that, the uploading of the show cause notices is one of the moves permitted under the Rules. Nevertheless, if at all the petitioner has closed the business already and therefore he could not have received the notice, one more chance may be given, fixing personal hearing also and on that date, if the petitioner comes forward to file supporting documents to establish that the export proceeds pertaining to the consignment exported by several shipments have been realised, it is open to him to make it. Accordingly, after giving such an opportunity, orders will be passed by the Revenue, he submitted.

7. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

8. Since the show cause notice and the notice for personal hearing has not been received by the petitioner either through electronic mode or to the registered address of the petitioner, and it has been uploaded in the web portal and the petitioner has already closed the business before the show cause notices are said to have been issued through on-line mode ie., web portal, this Court feels that there is some justification on the part of the petitioner to claim that the notices have not been effectively issued or served on the petitioner.

9. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That the impugned order is set aside and the matter is remitted back to the respondent for reconsideration.
- While reconsidering the same, the respondent shall issue a fresh show cause notice to the petitioner in the address given in the present writ petition by giving a specific date for personal hearing also.
- On the said date, the petitioner or his representative shall appear without fail and defend his case. Thereafter, the respondent Revenue can proceed to pass a final order on merits and in accordance with law.
- It is made clear that on the date to be fixed by the Revenue as indicated above, if the petitioner does not choose to appear or to give reply, it is open to the Revenue to proceed further with the available records and pass suitable orders thereon.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KST

To

The Deputy Commissioner of Customs (BRC-DBK)
Chennai- IV
Chennai-600 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.15932

W.P.No.4964 of 2022

MT(CO)
RLP(25/03/2022)