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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.387 of 2022

M/s.Sambros Tex Global Limited,
rep. by its Managing Director,
Sampath Kumar,
No.126, Sasthri Road,
Ramnagar,
Coimbatore - 641 009.

...Appellant

vs.

1.The Commissioner of Customs (Exports),
O/o. The Commissioner of Customs,
Custom House,
Chennai 600 001.

2.The Deputy Commissioner of Customs (BRC-DBK),
O/o. The Commissioner of Customs,
Custom House,
Chennai 600 001.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.01.2022 passed by this Court in W.P.No.11495 of 2021.

Prayer in W.P.No.11495 of 2021 : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order-in-original No.81524 of 2021 of the 2nd respondent dated 19.03.2021 and quash the same.

For Appellant : Mr.A.Mohamed Ismail

For Respondents : Mr.R.Gunaalan,
Jr. Standing Counsel
for Customs & GST



J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN, J.)

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Challenging the order dated 03.01.2022 passed by the learned Single Judge in W.P.No.11495 of 2021, the Writ Petitioner has come up with the present Writ Appeal.

2. The learned Single Judge has dismissed the said Writ Petition on the ground that, the Petitioner has an efficacious alternative remedy before the Appellate Commissioner under Section 128 of the Customs Act, 1962 and directed the Writ Petitioner to file a Statutory Appeal before the Appellate Commissioner within a period of 30 days from the date of receipt of a copy of the order. It was further held that, in case, if such an Appeal is filed within the time stipulated by this Court together with necessary pre-deposit, the Appellate Commissioner shall entertain the Appeal and dispose of the same on merits and in accordance with law.

3. According to the Appellant/Writ Petitioner, they have sent a reply to the Show Cause Notice vide letter dated 04.05.2017 and the same was acknowledged by the Office of the 2nd Respondent on 09.05.2017. But, the impugned order dated 19.03.2021 passed by the 2nd Respondent proceeds on the basis as if, there was no reply.

4. Learned Standing Counsel appearing for the Respondents submitted that, the 2nd Respondent received the reply to the Show Cause Notice, from the Writ Petitioner, however, in the impugned order, it is mentioned that, that there was no reply from the Writ Petitioner.

5. Even though, the Appellant has referred to the Division Bench decision of this Court made in Writ Appeal No.2465 of 2021 vide judgment dated 28.09.2021, the same may not be applicable to the facts of this case, as even after expiry of the time stipulated, determination has been made therein. But, in the present case, the reply sent by the Writ Petitioner has not been considered by the Respondents. Hence, on that score, we interfere with the order dated 19.03.2021 impugned in the Writ Petition, thereby, the order of the learned Single Judge is set aside and the matter is remanded to the Original Authority concerned, for fresh consideration. The Original Authority shall afford an opportunity of personal hearing to the parties and pass appropriate orders in accordance with law within a period of two months from the date of receipt of a copy of this judgment.



In fine, the Writ Appeal is allowed on the above terms. No costs. Consequently, connected C.M.P.No.3001 of 2022 is closed.

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Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

- 1.The Commissioner of Customs (Exports),
O/o. The Commissioner of Customs,
Custom House,
Chennai 600 001.
- 2.The Deputy Commissioner of Customs (BRC-DBK),
O/o. The Commissioner of Customs,
Custom House,
Chennai 600 001.

+1cc to Mr.R.Gunaalan, Advocate, S.R.No.14293

+2ccs to Mr.C.Sivakumar, Advocate, S.R.No.13334

W.A.No.387 of 2022

MT(CO)
RVM(24/03/2022)