IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. NO.5179 OF 2022 AND
W.M.P.NOS.5278 & 5279 OF 2022

SISCO LATEX (P) LTD.,
Module 29, II Floor, Block II, SIDCO,
Elect Complex, Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 32. ...Petitioner

Vs

1.The Assistant Commissioner of Customs
Arrear Recovery Cell (Chennai IV)
Office of the Commissioner of Customs IV
No.60, Rajaji Salai, Custom House,
Chennai – 1.

2.The Deputy Commissioner of Customs (BRC-DBK)
Office of the Commissioner of Customs IV
No.60, Rajaji Salai, Custom House,
Chennai – 1. ...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records in Order in Original No.82277 of 2021 dated 26.03.2021 passed by the 2nd respondent and the Consequential Demand Notice dated 16.02.2022 bearing F.No.ARC-841/2021-CH IV (DBK-issue) passed by the 1st respondent and quash the same.

For Petitioner : Mr.P.J.Rishikesh

For Respondents : 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 in Order-in-Original No.82277 of 2021 dated 26.03.2021 passed by the 2nd respondent and the consequential Demand Notice dated 16.02.2022 bearing F.No.ARC-841/2021-CH IV (DBK-issue) passed by the 1st respondent and quash the same.

2. The petitioner has been paid with duty drawback under the provisions of the Customs Act as well as the provisions of the Customs, Central Excise Duties and Services Tax Drawback Rules, 1995.

3. Such a duty drawback availed by the petitioner, against which, export should have been made and sale proceeds should be realised by the petitioner who is an exporter and that should be intimated to the Customs Authorities within a time frame as per the provisions of the Foreign Exchange Management Act i.e., FEMA Act, 1999.

4. In this context, according to the learned counsel for the petitioner Mr.P.J.Rishikesh, the sale proceeds having been realised was intimated to the Customs Authorities, pursuant to the alert put up in the web portal, where, the name of the petitioner concern also has been found and on production of such documents, having considered the same, the alert has been removed and this is evidenced from the web portal communication, which has been taken out dated 25.09.2020.

5. Thereafter, no communication whatsoever has been received, however, straightaway the present order Order-in-Original dated 26.03.2021 was issued followed by the demand letter dated 16.02.2022, whereby, a demand of Rs.26,16,899/- has been made as if that the duty drawback availed by the petitioner has to be recovered from the petitioner.

6. I have heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents, who would submit that, if the petitioner, having realised the sale proceeds, had filed those documents in support of such realisation in time to the respondent Customs, for which, if he claims that the web portal communication dated 25.09.2020, the same would be considered once again and accordingly, the revised order would be passed. Therefore, for that purpose, the matter can be remitted to the respondents.

7. Having considered the said submissions made by both sides and after having gone through the said documents referred to above, this Court feels that the matter can be remitted back to the respondents for reconsideration. While reconsidering the same, the respondent Customs can verify the documents referred to above, where, on 25.09.2020 the alert already been put in for several companies like the petitioner since has been removed after receipt of documents to the satisfaction with regard to the realisation of the sale proceeds and orders can be passed.

8. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That the impugned order is set aside and the matter is remitted back to the respondents for reconsideration. While reconsidering the same, the documents submitted by the petitioner, pursuant to the letter issued in the web portal which has been reflected in the web portal document dated 25.09.2020, can be verified and if the Revenue needs any further input in this regard, a notice can be given to the petitioner and on receipt of the same, the petitioner, on the day to be mentioned in the notice, shall produce the supportive documents for having realised the sale proceeds and on getting such input to be supplied by the petitioner, a revised order shall be passed, where, if there is no scope for any recovery of duty drawback, accordingly, the issue can be disposed of.

9. With these directions, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

Sgl

To

1.The Assistant Commissioner of Customs
Arrear Recovery Cell (Chennai IV)
Office of the Commissioner of Customs IV
No.60, Rajaji Salai, Custom House,
Chennai - 1.

2.The Deputy Commissioner of Customs (BRC-DBK)
Office of the Commissioner of Customs IV
No.60, Rajaji Salai, Custom House,
Chennai - 1.

+1cc to Mr.A.P.Srinivas, Advocate Sr.No.16338

W.P.No.5179 of 2022

AP(CO)
RVM(18/03/2022)