IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.10886 of 2022
and
W.M.P.Nos.10501 & 10502 of 2022

M/s.Kishore Industries
Rep.by its Director,
B-5/144, Safdarjang Enclave
New Delhi 110 029. ... Petitioner

-Vs-

Deputy Commissioner of Customs
BRC / Drawback Office of Commissioner
of Customs, Chennai IV, Krishna Block
Rajaji Salai, Chennai 600 001. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent herein in F.No. S. Misc. 2/348/2016-DBK and order in original 82391/2021 dated 27.03.2021 and quash the same and consequently direct the respondent to give an opportunity of being heard to the petitioner.

For Petitioner : Mr.A.Ganesh

For Respondents : Mr.K.Mohana Murali
Senior Panel Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records on the file of the respondent herein in F.No. S. Misc. 2/348/2016-DBK and order in original 82391/2021 dated 27.03.2021 and quash the same and consequently direct the respondent to give an opportunity of being heard to the petitioner.

2. The petitioner, at the time of importing the raw

materials, had availed duty drawback on condition that, after completing the process export should be made and the sale proceeds of such export should have been realized by the petitioner, which should be brought to the notice of the Customs, otherwise duty drawback would be canceled.

3. In this regard, according to the Revenue since the petitioner exporter has not produced the documents or proof from the bank ie., negative statement or certificate, or bank statement to establish that, he has realized the sale proceeds pursuant to the export, show cause notice was issued by the Revenue and since the said show cause notice has not been responded, the Revenue proceeded to complete the assessment and passed order-in-original dated 27.03.2021, which is under challenge in this writ petition.

4. Heard Mr.A.Ganesh, learned counsel for the petitioner, who would submit that, on 22.03.2021 just a week before the impugned order was passed, the bank statement had been given, where, in respect of each of the export consignment the sale proceeds received by the petitioner had been stated and the details to that effect ie., bank certificate of export and realization had been filed along with the said letter dated 22.03.2021. However, without considering the same the impugned order has been passed, he contended.

5. However, Mr.K.Mohana Murali, learned Senior Panel Counsel appearing for the respondent Revenue would submit that, whether on 22.03.2021 such a statement as claimed by the petitioner through his counsel has been filed or not itself is a question because, there is no proof to show that the respondent Customs Department had received the documents. When that being so, there is absolutely no infirmity in passing the impugned order dated 27.03.2021, as prior to that no such document as claimed by the petitioner has been filed before the Customs Department.

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

7. It is the definite claim of the petitioner that, on 22.03.2021 the necessary communication / documents have been produced to establish that the sale proceeds in entirety during the relevant period has been realized. Whether the same has been produced by the produced by the petitioner to the Revenue may be a question to be decided. However, the fact remains that, prima facie there are bank documents and if that is perused by the respondent Revenue, they can come to the conclusion that the sale proceeds has been realized.

8. In that view of the matter, this writ petition is disposed of with the following order.

- The impugned order dated 27.03.2021 is set aside and the matter is remitted back to the respondent Revenue for reconsideration.
- While reconsidering the same, the reply stated to have been given by the petitioner dated 22.03.2021 along with necessary documents ie., bank certificate on export to establish realization of sale proceeds covered under the impugned order, shall be considered, after giving an opportunity of being heard to the petitioner, a final order / revised order can be passed by the respondent thereafter.

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

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

KST

To

The Deputy Commissioner of Customs
BRC / Drawback Office of Commissioner
of Customs, Chennai IV, Krishna Block
Rajaji Salai, Chennai 600 001.

+1cc to Mr.A.Ganesh, Advocate, S.R.No.30008

W.P.No. 10886 of 2022

NR(CO)
SU(26/05/2022)