BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.5071 of 2012
and
M.P(MD).No.1 of 2012

M/s.V.M.S.V.Exports Limited,
Represented by its Director,
Mr.S.Balasundaram ... Petitioner

Vs.

1.The Joint Secretary,
Government of India, Ministry of Finance,
Department of Revenue, (Revision Application Unit),
Hudco Vishala Building,
14, B-Wing, 6th Floor,
Bhikaji Kama Place,
New Delhi-110 066.

2.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

3.The Chief Manager,
Canara Bank,
Fort Main Road, Fort,
Salem-636 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the first Respondent in relation to the impugned order No.10/11-Cus dated 20.01.2011 in File No.373/48/DBK/09-RA-Cus and quash the same.

For Petitioner	: Mr.Hari Radhakrishnan
For R1	: Mr.P.Paul Pandi Senior Panel Counsel
For R2	: Mr.S.Gurumoorthy Senior Panel Counsel
For R3	: No Appearance

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

2. The petitioner claims to have exported good and claimed duty drawback under Section 75 of the Customs Act, 1962. The duty drawback was also sanctioned. Thereafter, it was realised that there was no realisation of the export proceeds and therefore, draw back sanctioned to the petitioner was sought to be recovered. Under these circumstances, Order in original No.87 of 2007, dated 19.04.2007 came to be passed by the Assistant Commissioner (DBK).

3. Aggrieved by the same, the petitioner had preferred an appeal before the Appellate Commissioner in Appeal No.C24/66/2007-TTN (Cus). The said appeal was disposed vide Order in Appeal No.28 of 2008 dated 14.11.2008 by the Commissioner of Customs and Cenrtral Excise (Appeals), Trichy. The Commissioner of Customs and Cenrtral Excise (Appeals) upheld the order of the Assistant Commissioner (DBK), dated 19.04.2007. Aggrieved by the same, the petitioner preferred a revision petition under Section 129 DD of the Customs Act, 1962 which has culminated in the impugned order, dated 27.01.2011 of the respondents.

4. It is the case of the petitioner that during the hearing before the first respondent, the petitioner produced a copy of Bank Realisation Certificate (BRC) covering one of the shipping bills which was subject matter of the duty draw back.

5. The learned counsel for the petitioner submits that the fact that the petitioner had effected exports is not in dispute. The petitioner had failed to pay the amounts to the supplier of input identified as foreign buyer and therefore payments were directly made to the supplier of input nominated by the buyer. That apart, it is submitted since the amount was indirectly paid to the petitioner through the supplier input there was inward remittance on the made by the petitioner. It is therefore submitted that the impugned order holding that the petitioner has not filed any documents is not sustainable. The learned counsel for the petitioner further submits that the order has been passed by the Joint Secretary who in the rank of the Commissioner of Customs and Central Excise (Appeals). Therefore, the office of the the first respondent passed the order who was incompetent. It is submitted that only an Additional Secretary was a competent authority to pass the order under Section 129 DD of the Customs Act, 1962 and therefore submitted that the impugned order has to go.

6. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Division Bench in the High court of Punjab and Haryana in **NVR Forgings Vs Union of India** reported in **2016 (335) ELT 679.** The learned counsel for the petitioner submits that the aforesaid order of the Division Bench of

the Punjab and Haryana was also upheld by the Supreme Court inasmuch as the Departments appeal was also dismissed in **Union of India Vs NVR Forgings** reported in **2017 (348) ELT A82 (SC).** The learned counsel for the petitioner submits that the petitioner have received further documents to substantiate that export has been received in respect of the other two shipping bills.

7. Opposing the prayer, the learned counsel for the respondents 1 and 2 submits that there is no merit in the present writ petition. It is therefore submitted that the exports are of the year 2001 and almost 21 years lapsed since then. That apart, it is submitted that there is no proof that the petitioner had earlier filed relevant Bank Realisation Certificate (BRC) either before the Assistant Commissioner or the Appellate Commissioner or before the first respondent. It is therefore submitted that on this count also, the present writ petition is liable to be dismissed.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2. I have also perused the impugned order passed by the first respondent and the order passed by the Assistant Commissioner and Appellate Commissioner on 19.04.2007 and 14.11.2008 respectively. I have also perused the copy of the shipping bill No.1054463, dated 06.10.2001 and a copy of one Bank Realisation Certificate (BRC).

9. The said certificate appears to be cover one of shipping bill in the Order in Original No.87 of 2007, dated 19.04.2007. Therefore, to that extent, the issue may require re-consideration by the authority under Section 129DD of the Customs Act. Whether the petitioner can produce other collateral evidence to substantiate that there was indeed realisation in respect of the other two shipping bills or not is a matter can be decided by the first respondent or a competent authority.

10. Considering the fact that the first respondent/Joint Secretary was incompetent to decide the case and I am inclined to set aside the impugned order and the remit the case back to the first respondent to pass a fresh order. The Government of India is directed to nominate an Additional Secretary to decide the revision petition filed by the petitioner under Section 129 DD of the Customs Act. Such officer shall consider the Bank Realisation Certificate (BRC) filed by the petitioner along with the type set. The petitioner is also given liberty to produce additional evidence to substantiate that indeed there was an export realisation by the petitioner on the exports made. In case, the Additional Secretary is of the view that the collateral evidence indeed substantiate export realisation, appropriate orders may be passed in favour of the petitioner. This exercise shall be carried out by the Additional Secretary within a period of three months from the date of receipt of copy of this order. It is needless to state that before passing any such order, the petitioner shall be heard. It is also made clear

that any document which the petitioner wishes to produce before the orders passed shall be sent by registered post in advance with acknowledgement. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (//rti)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To

1. The Joint Secretary,
Government of India, Ministry of Finance,
Department of Revenue, (Revision Application Unit),
Hudco Vishala Building,
14, B-Wing, 6th Floor,
Bhikaji Kama Place,
New Delhi-110 066.

2. The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004

3. The Chief Manager,
Canara Bank,
Fort Main Road, Fort,
Salem-636 001.

+1 CC to M/s.P. PAUL PANDI, Advocate (SR-18923[F] dated 18/04/2022)

W.P(MD).No.5071 of 2012
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NSN(CO)
KB(04.05.2022) 4P 5C