



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.8801 of 2022

and

W.M.P(MD).Nos.6408 and 6409 of 2022

M/s.Gold Processors,
Rep. by its Proprietor
Mr.Abhisek Dhawan,
Plot No.85, Pritam Singh Nagar,
Punjab.

... Petitioner

Vs.

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

2.The Assistant/Deputy Commissioner of Customs (SIIB),
Custom House, New Harbour Estate,
Tuticorin-628 004.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order-in-Original TUT-CUSTM-PRV-COM-02/2022 in C.No.VIII/10/44/2021-Adjn., O.R.No.05/2021-2022, dated 31.03.2022, passed by the first Respondent herein and to quash the same as illegal, arbitrary, unfair, un-reasonable and without jurisdiction and in a clear violation of principles of natural justice and perverse on account of not obeying this Court direction dated 29.07.2021, consequently direct the Respondents herein to permit the petitioner to Take Back the Cargo to their Premised, comprising of Readymade Garments presented for export vide Shipping Bill Nos.1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, all dated 15.04.2021 immediately as per the direction of this Court order dated 29.07.2021, passed in W.P.(MD).No.10363 and 12925 of 2021, waiving the charges towards demurrage/ground rent charges.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Mr.R.Aravindan
Senior Standing Counsel



ORDER

The petitioner in this writ petition has challenged the Impugned Order-in-Original TUT-CUSTM-PRV-COM-02/2022, dated 31.03.2022 passed by the first respondent.

2. The impugned show cause notice precedes the impugned Order in Original issued to the petitioner which calls upon the petitioner to show cause as to why the goods proposed to be exported under duty draw back scheme should not be detained and why the petitioner should not be imposed with penalty.

3. During the interregnum, the petitioner had approached this Court for reclaiming the export goods in W.P.(MD).Nos.10363 and 12925 of 2021. An order came to be passed on 29.07.2021. As per the aforesaid order, the petitioner was allowed to take back the cargo to their premises, and the question of insisting the petitioner to furnish the bank guarantee did not arise when the petitioner wanted to take back the goods, due to cancellation of the export order. This Court therefore quashed communication dated 08.07.2021 issued by the Assistant/Deputy Commissioner of Customs (SIIB) and the respondents are directed to permit the petitioner to take back the cargo to their premises, comprising of "Readymade Garments" presented for the export vide Shipping Bill Nos.1123305, 1122442, 1122472, 1122443, 1122483 and 1122478, all dated 15.04.2021, without insisting Bank Guarantee.

4. The learned counsel for the petitioner submits that despite the positive direction, the respondents have not complied with the same and therefore the petitioner constrained to file Cont.P(MD). No.627 of 2022. An interim order came to be passed in the aforesaid contempt petition by directing the respondents to report compliance today. It is submitted that even as on date, the respondents have not complied with the directions. It is therefore submitted that the impugned order passed by the Commissioner seeking to impose penalty and ordering confiscation of the entire cargo by rejecting the transaction value declared by the petitioner in the shipping bills by giving an option to pay redemption fine of Rs.30,00,000/- under Section 125 of the Customs Act does not arise. It is therefore submitted that the impugned order is liable to be quashed.

5. Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that there is no merit in the present writ petition as far as the challenge to the impugned order is concerned, as the petitioner has an alternate remedy before CESTAT, Chennai. Therefore, the writ petition is liable to be dismissed. It is further submitted that the order in W.P.(MD).Nos.10363 and 12925 of 2021 directing the respondents to release the cargo is in appeal before the Division Bench of this Court in Writ Appeal Nos.409 and 410 of 2022. It is therefore submitted that the writ petition is therefore liable to be dismissed with the direction to the petitioner to file a statutory appeal before the CESTAT, Chennai.



6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned senior standing counsel for the respondents.

7. I do not find any merits in the present writ petition as far as the challenge to the impugned order is concerned as the petitioner has an alternate remedy. Therefore, the writ petition is liable to be dismissed. However, I give liberty to file a statutory appeal before CESTAT, chennai within a period of sixty days from the date of receipt of copy of this order to the petitioner.

8. The writ petition stands disposed with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar(CS)

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To

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

2.The Assistant/Deputy Commissioner of Customs (SIIB),
Custom House, New Harbour Estate,
Tuticorin-628 004.

+1 CC to M/s.A.K. JAYARAJ, Advocate (SR-23258[F] dated 02/05/2022)
W.P(MD) .No.8801 of 2022
29.04.2022

SG(CO)

GC(25.05.2022) 3P 4C