BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.15733 of 2020
and
W.M.P.(MD).Nos.13187 and 13188 of 2020

P.Suyambu ... Petitioner

Vs.

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

2.The Assistant Commissioner,
Office of the Commissioner of Customs,
Customs House, Tuticorin.

3.The Manager,
M/s.City Union Bank Limited,
No.10, North Car Street,
Tirunvelveli-627 006. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the order in Original No.72/2018 dated 20.02.2018 and the letter, dated 09.07.2020 in C.No.VIII/48/624/2018 and the notice, dated 14.07.2020 in C.No.VIII/48/624/2018 of the second respondent herein and quash the same.

For Petitioner	:	Mr.Kathiravan For Mrs.AL.Ganthimathi
For R1 & R2	:	Mr.B.Vijaykarthikeyan Senior Standing Counsel
For R3	:	No Appearance

ORDER

The petitioner had challenged the impugned order in Original No.72/2018, dated 20.02.2018 and the consequential recovery proceedings initiated against the petitioner.

2. The petitioner was promoter and Director of M/s.Aryan Tex Private Limited in Nagercoil and that the said company had exported and imported the goods and claimed duty drawback. A show cause

notice was issued calling upon the said company to show cause as to why the drawback amount that was sanctioned should not be recovered, as the said company has not furnished proof of foreign inward remittance and thus violated Rule16-A of the Customs Central Excise Dutes in Service Tax Draw Back Rules, 1995. The facts on record indicate that the said company had closed down its operation on 07.09.2015, after draw back amount was sanctioned to the petitioner for a sum of Rs.99,45,679/-.

3. It is the case of the petitioner that the show cause notice No.11 of 2018, dated 07.02.2018 and further notice was not served either on said company or on the petitioner and therefore the Order in Original No.72 of 2018 passed by the second respondent was liable to be quashed as it is in violation of principle of natural justice. It is further submitted that though the company has been closed, the petitioner as the director has all the records to substantiate that there was inward remittance of foreign exchange and that there was no violation of Rule16-A of the Customs Central Excise Dues in Service Tax Draw Back Rules, 1995. The impugned recovery notice, dated 14.07.2020, has been challenged primarily on the ground that since the impugned Original No.72 of 2018, dated 20.02.2018 was passed in violation of principle of natural justice, question of recovering the amount does not arise. It is futher submitted that the amount cannot be recovered from individual directors.

4. Opposing the prayer, the learned counsel for the respondents submits that Order in Original No.72 of 2018, dated 20.02.2018 was served on the company on 09.04.2018 and since the said company failed to file a statutory appeal, the impugned recovery notice has been issued in the absence of a proper appeal. It is therefore submitted that the respondents are entitled to proceed accordingly to recover the duty draw back of Rs.99,45,679/-, which was confirmed vide Order in Original No.72 of 2018, dated 20.02.2018.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I also perused the affidavit filed in support of the present writ petition and the counter affidavit filed by the respondents 1 and 2.

6. Both the petitioner and the official respondents 1 and 2 confirm that the exports were made under various shipping bills during 2014 and that the said company, namely, M/s.Aryan Tex Private Limited in Nagercoil was sanctioned duty drawback of Rs.99,45,679/-. After claiming duty drawback, the company closed down the business and the same was intimated to the Registrar of Companies.

7. It appears that after the company was closed, the assets were sold later. It is not clear whether the said company's name was struck off from the Registrar of Companies. At the same time, the petitioner has submitted all the records pertaining to export to substantiate inward remittance are available and therefore if a fair chance is given to file a statutory appeal against the impugned

order or if the matter is remitted back to the respondents to pass a fresh order, the consequential recovery proceedings can be kept in abeyance. The impugned Order in Original No.72 of 2018, dated 20.02.2018 shows that the notice dated 24.01.2018 was preceded with a Show Cause Notice No.11 of 2018, dated 07.02.2018. It had remained unserved on the petitioner. The impugned Order in Original No.72 of 2018, also indicates that Show Cause Notice No.11 of 2018, dated 07.02.2018 was not served and had remained unserved on the said company and was returned on 10.02.2018 and therefore based on the available records, the said order has been passed by citing Rule16-A of the Customs Central Excise Dues in Service Tax Draw Back Rules, 1995.

8. Considering the fact that the Show Cause Notice No.11 of 2018, dated 07.02.2017 had remained unserved on the said company, the impugned order in Original No.72 of 2018, dated 20.02.2018 has been passed in violation of principal of natural justice. It is therefore liable to be quashed. Consequently, the impugned recovery notice is also liable to be quashed. The petitioner may have records to prove that there were inward foreign remittance on the exports.

9. Considering the over all facts and circumstances of the case, the impugned order and the consequential recovery proceedings are quashed and the case is remitted back to the second respondent to pass a fresh order within a period of 90 days from the date of receipt of copy of this order. The impugned order which stands quashed shall be treated as a corrigendum to the Show Cause Notice No.11 of 2018, issued to the petitioner. The petitioner is directed to file a reply together within 30 days together with all evidence to substantiate that there was indeed inward remittance for foreign exchange on the exports made by the said company for which draw back was granted. If the petitioner fails to co-operate with the second respondent, the impugned order, dated 20.02.2018 and the recovery proceedings, dated 14.07.2020 which stands quashed will stand automatically revived. It is needless to state before passing such order, the petitioner shall be heard.

10. The writ petition stands allowed with the above observation. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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

2.The Assistant Commissioner,
Office of the Commissioner of Customs,
Customs House, Tuticorin.

+1CCto M/s.B.VIJAY KARTHIKEYAN, Advocate(SR-10869[F]dated 09/03/2022

+1 CC to M/s.SL.GANTHIMATHI, Advocate (SR-11106[F] dated 10/03/2022

ORDER MADE IN
W.P(MD).No.15733 of 2020
09.03.2022

PKP/22.03.2022/4P/5C