BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.4867 of 2015

and

M.P.(MD) No.1 of 2015

M/S.Sabare International Limited,
represented by its Authorized Signatory,
P.Govindasamy, having office at
S.F.No.6/1, Kovai Main Road,
Nedungur Village, Karudayampalayam Post,
K.Paramathi,
Karur 639 111. ... Petitioner

/vs./

1.The Joint Secretary (Revision Authority),
Government of India,
New Delhi 110 001.

2.Commissioner of Customs & Central Excise (Appeals),
No.1, Williams Road,
Cantonment, Trichirapalli 620 001.

3.The Assistant Commissioner of Customs,
Customs Division,
No.1, Williams Road,
Cantonment, Trichirapalli 620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent order No.78/12-Cus dated 12.03.2012, confirming the order of the 2nd respondent order-in appeal No.03/2010 dated 18.08.2010 in confirming the order of the 3rd respondent Order-in-Original No.33/2009 dated 03.09.2009 and also a letter in C.No.VIII/58/05/2014 dated 19.05.2014 and quash the same, consequently directing the respondents to repay sanctioned and paid Drawback amount of Rs.3,93,266/- (Rupees Three Lakhs Ninety Three Thousand Two Hundred Sixty Six only) to the petitioner, which was recovered from the petitioner vide TR-6 Challan No.37/2012 totalling Rs.3,93,266/- and further not to impose any penalty covered under Shipping Bill No.2909 dated 28.12.2007.

For Petitioner : Mr.B.Sathish Sundar for Mr.M.Ramasamy

For Respondents : Mr.B.Vijay Karthikeyan Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to call for the records of the 1st respondent in Order No.78/12-Cus dated 12.03.2012, confirming the order of the 2nd respondent Order in Appeal No.03/2010 dated 18.08.2010 in confirming the order of the 3rd respondent Order in Original No.33/2009 dated 03.09.2009 and also a letter in C.No.VIII/58/05/2014 dated 19.05.2014, to quash the same, to direct the respondents to repay sanctioned and paid Drawback amount of Rs.3,93,266/- to the petitioner and to not to impose any penalty covered under Shipping Bill No.2909 dated 28.12.2007.

2.The facts are not in dispute. The petitioner had exported the goods and claimed duty drawback under the provisions of the Customs, Central Exercise Duties and Service Tax Drawback Rules, 1995. After the exports were made, the petitioner was also granted drawback for a sum of Rs.3,68,266/-. The grant of drawback was subject to the realization of exports proceeds within a period of 6 months from the date of export ie., on or before 28.06.2008. However, the petitioner was unable to get the payment from the foreign buyer and eventually got the export proceeds realized only on 18.09.2009. This was brought to the notice of the 3rd respondent on 22.09.2009. However, during the interregnum, the 3rd respondent issued a show cause notice dated 06.04.2009 calling upon the petitioner to show cause as to why the duty drawback granted to the petitioner should not be recovered in terms of Section 28 of the Customs Act, 1962 and why penalty and interest should not be levied in terms of Section 117 and 75 (1) of the Customs Act, 1962. The petitioner replied to the same. Since the petitioner had not evidence of the export proceeds by then, an Order in Original No.33 of 2009 came to be passed by the 3rd respondent on 03.09.2009. The petitioner also did not file an appeal in time, though the petitioner had obtained Bank Realization Certificate (BRC) from the bank on 18.09.2009 but had intimated the same to the 3rd respondent.

3.Aggrieved by the same, the petitioner preferred an appeal on 12.05.2010 under Section 128 of the Act. By an order dated 18.08.2010, the 2nd respondent has rejected the appeal. A further revision before the 1st respondent under Section 129DD of the Act was also dismissed by the 1st respondent. Aggrieved by the same, the petitioner has filed this writ petitioner.

4.The present writ petition has been filed in the year 2015, though the impugned order of the 1st respondent was passed on

22.03.2012. It is further noticed that prior to filing of the present writ petition, the Department had also issued a demand notice dated 11.04.2012, pursuant to which the petitioner has paid a sum of Rs.1,50,000/- on 06.06.2012 and further a sum of Rs.2,43,266/- on 01.08.2012. The respondents had thereafter issued another demand notice asking the petitioner to pay interest of Rs.2,50,373/- and thereafter another notice on 24.09.2013 calling upon the petitioner to pay interest for a sum of Rs.3,25,991.08/- for the period from 08.12.2007 to 06.08.2012.

5.It is the case of the petitioner that the petitioner is entitled for refund of the amount and for a declaration in the light of Rule 16A(4) of the Customs, Central Exercise Duties and Service Tax Drawback Rules, 1995. The learned counsel for the petitioner submits that the records are available with the 3rd respondent and if the matter is directed to be reconsidered by the 3rd respondent, appropriate orders can be passed by the 3rd respondent, in the light of Rule 16A(4) of the aforesaid Rules.

6.Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that the writ petition is hopelessly time barred and deserves to be dismissed on account of latches. It is submitted that the export pertains to the year 2007 and the order of the 1st respondent is dated 22.03.2012. It is further submitted that pursuant to the demand dated 11.04.2012, the petitioner has voluntarily paid the amount on 06.06.2012 and 01.08.2012 without protest. That being the case, there is no further case made out for any interference at this stage. The learned Senior Standing Counsel for the respondents therefore submits that the writ petition is liable to be dismissed.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Counsel for the respondents.

8.The petitioner has made exports during December 2007 ie., on 28.12.2007. The petitioner was granted duty drawback, which is an export incentive under Section 75 of the Customs Act on 09.01.2008. No doubt the petitioner was required to produce export realization within 6 months from the date of export ie., on or before 28.06.2008. The fact remains that the petitioner has produced the documents to substantiate that there was indeed an export realization on 22.09.2009. Rule 16A(4) of the Customs, Central Exercise Duties and Service Tax Drawback Rules, 1995 reads as under:-

"Rule 16A: Recovery of amount of Drawback where export proceeds not realized:-

1...........

2...........

3...........

4. Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him under sub-rule(2) or sub-rule (3) and the exporter produces evidence about such realization within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs of Deputy Commissioner of Customs to the claimant."

9.A reading of the above provision seems to indicate that where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him under sub-rule(2) or sub-rule (3) and the exporter produces evidence about such realization within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs of Deputy Commissioner of Customs to the claimant.

10.In this case, the recovery has been made long after the export realization. Considering the same and considering the fact that there is indeed an export realization, the case of the petitioner deserves a favorable disposal by the respondents.

11.Under these circumstances, I am inclined to dispose of this writ petition by remitting the case back to the 3rd respondent/the Assistant Commissioner of Customs, to take note of Rule 16A(4) of the Customs, Central Exercise Duties and Service Tax Drawback Rules, 1995 and to dispose of the same on merits and in accordance with law, in the light of the Bank Realization Certificate produced by the petitioner on 22.09.2009.

12.The writ petition stands disposed of in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Co)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Joint Secretary (Revision Authority),
Government of India,
New Delhi 110 001.

2.Commissioner of Customs & Central Excise (Appeals),
No.1, Williams Road,
Cantonment, Trichirapalli 620 001.

3.The Assistant Commissioner of Customs,
Customs Division,
No.1, Williams Road,
Cantonment, Trichirapalli 620 001.

+1 CC to M/s.B. VIJAY KARTHIKEYAN, Advocate (SR-20317[F] dated 22/04/2022)
+1 CC to M/s.M. RAMASAMY, Advocate (SR-20398[F] dated 22/04/2022)

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