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W.P.No.375 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.375 of 2023
and W.M.P.No. & 345 of 2023

M/s.Sakthi Logistics,
Represented by its Proprietor S.Rajesh Manoharan,
Presently at No.18-A, Narashimha Nagar,
2nd Street, Kodungaiyur,
Chennai – 600 118.

... Petitioner

Vs.

1. The Additional Commissioner of Customs,
Chennai – IV Commissionerate,
Office of the Commissioner of Customs,
Chennai – IV, Custom House, No.60,
Rajaji Salai, Chennai – 600 001.

2. The Commissioner of Customs,
Custom House, No.60,
Rajaji Salai, Chennai – 600 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent herein leading to the passing of the



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Impugned Order-in-Original No.89241/2022, Job No.88240/2022, F.No.ADJN/DRI/CZU/07/2021-CH-IV, DIN:20220373MZ0000517306, dated 31.03.2022, by the 1st respondent herein and quash the same as illegal, arbitrary, unfair and without jurisdiction and in violation of principles of natural justice and further direct the respondent to furnish the above Impugned Order-in-Original No.89241/2022 dated 31.03.2022 to enable the petitioner to challenge the same.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.K.S.Ramasamy
Junior Panel Counsel for Customs

ORDER

This writ petition has been filed challenging the Impugned Order-in-Original No.89241/2022, dated 31.03.2022 passed by the first respondent for PAN:AASCS0886M for AY 2015-16.

2. The petitioner is a registered Company carrying on the business of freight forwarding. They have receiving the goods and will made arrangement for the exporting the same. The present case is that the petitioner was involved in exporting Quartz Powder, whereas, subsequently, it was found that the consignment were Red Sanders.



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Therefore, the 1st respondent has issued an impugned notice against the petitioner imposing the penalty of Rs.50 lakhs.

3. Learned counsel for the petitioner would submit that the only grievance of the petitioner is that a sum of Rs.50 lakhs was imposed as fine simply for the reasons that the petitioner had processed the export consignment without any verification of the credentials and antecedents of the actual IEC holders and the exporter KYC documents. Further alleged that the failure or omission on their part, ultimately resulted in the filing of the shipping bill for the subject consignment, without any kind of verification of the credential ability and antecedents of the actual IEC holders or of the persons submitting the export documents.

4. He would further submit that the Shipping Bill dated 03.08.2020, during the period which, the entire country was suffered with Covid 19 pandemic and there was a travel restriction and therefore, the physical verification of premises of the IEC holders is not feasible, whereas, such statement was not considered by the respondents. Further, the petitioner had acted in bonafide manner for facilitating the export of



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Quartz Powder and they were not aware of the materials inside and processed the customs. Subsequently, they came to know that the goods were replaced with Red Sanders logs and there was no involvement of the petitioner in exportation of prohibited goods. Therefore, imposing of Rs.50 lakhs penalty is high for a freight forwarder and even in the event of filing the statutory appeal, they have to deposit 7.5 % of the penalty amount as a condition precedent for filing the appeal. Hence, the present Writ Petition has been filed to quash the Impugned Order.

5. Mr.K.S.Ramasamy, learned Junior Panel Counsel for Customs would submit that the petitioner has received the Impugned Order-in-Original No.89241/2022, dated 31.03.2022, without making any submissions on 08.06.2022 and there is no truth in the statement of the petitioner and the respondents also filed the proof before this Court. He would further submit that it is not that the petitioner was imposed fine only for the purpose of processing the subject export consignment without verifying the genuineness of export documents, but also for providing the service of customs clearance of the subject consignment without any authorization. He would also submit that the petitioner may



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file an appeal against the order under Section 128 of the Custom Act, but, the petitioner, without filing the appeal, had filed this present Writ Petition. Therefore, it is liable to be dismissed.

6. Heard the due consideration made by the learned counsel for the petitioner as well as for the respondents and also perused the materials available on record.

7. Though, the petitioner contends that no adjudication order was passed by the respondents, the fact remains is that the impugned order was served on the hands of the petitioner on 08.06.2022. One of the grounds for imposing the penalty was that non verification of the credentials and antecedents of the actual IEC holders and the exporter KYC documents. In the present case, the commission of the offence by the exporter is serious in nature and they have made an attempt to export the Red Sanders in the name of Quartz Powder and the petitioner was acted as freight forwarding agent for the exporter.

8. In such circumstances, this Court is of the view that the first



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respondent had rightly issued the impugned order and this Court is not inclined to quash the same. However, a liberty is granted to the petitioner to file a Statutory Appeal against the Impugned Order, within a period of **thirty days** from today. In such case, the Appellate Authority shall take the appeal on record without insisting the issue of limitation in filing the appeal and thereafter, the Authority shall dispose the same on merits, and in accordance with law.

9. In the result, this Writ Petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,

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