IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.1684 of 2020

M/s.Bhartiya International Limited
Rep by its General Manager
Finance Accounts / Authorised Signatory
C.Deenadayalan, 27/2, Bannerghatta Road
Gottigere Village, Bangalore. .. Petitioner

vs

1.The Commissioner of Customs,
(Chennai IV),Custom House, Chennai 1.

2.The Chief Commissioner of Customs,
Chennai Zone, Chennai 1.

3.The Assistant / Deputy Commissioner of Customs,
EDC Custom House, Chennai 1.

4.The Commissioner of CGST
Central Excise and Service Tax, Bangalore South,
Bangalore 560 001.

5.The Assistant / Deputy Commissioner
of Central Tax SDB Division,
7th Floor, A Wing, Kendriya Sadan,
Koramangala, Bangalore 560 034. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus calling for the records on the file of the first respondent ending with the order F. No. S. Misc. 39/ 2019-EDC dated 23.4.2019 passed by the first respondent and quash the same and consequently direct the first respondent herein to refund the claim filed for Integrated Tax paid by the petitioner Company to the tune of Rs. 25 79 502/- on the export of goods outside India pertaining to Shipping Bill No. 9663177 dated 2.11.2017.

For Petitioner	:	Mr.V.Lohit Kumar
For Respondents	:	Mr.V.Sundareswaran Senior Panel Counsel

ORDER

The challenge in this writ petition is to a letter from the office of the Commissioner of Customs, Chennai, dated 23.04.2019, wherein the Officer states that the only recourse available to the petitioner for claiming drawback benefit is to file a supplementary claim under Section 75 of the Customs Act, 1962.

2. Mr.V.Sundareswaran, learned Senior Standing Counsel, who appears for the respondents draws attention to paragraph 3 of the counter affidavit which sets out the facts in relation to the transactions. An error appears to have been occasioned at the stage of stuffing report where instead of 100, the number of packages was entered as 121. It is the specific case of the respondents that this error was at the instance of the petitioner only, and this is not really controverted before me.

3. The counter states that after that stuffing report was given by the Preventive Officer on 06.11.2009, the shipping bill moved to short shipment ('short ship') because of mis-match in number of packages, leading to an error in the Export General Manifest (EGM). It is for this reason that the export bill could not be processed for drawback. The counter also states that the petitioner did not approach the Officer in time and on account of this delay, the shipping bill had purged even prior to an order of 'let export' being issued.

4. A memo has been filed by the Panel Counsel that reads thus:-

> *"1.The above writ petition was filed for Certiorarified Mandamus to quash the order of the first respondent in F.No.S.Misc 39/2019-EDC dated 23/04/2019 and consequently direct the first respondent to refund the claim filed for Rs.25,79,502/- pertaining to shipping Bill No.9663177 dated 02/11/2017. The entire Integrated Goods and Service Tax (IGST) refund is sanctioned through portal and paid into the exported Bank account for which the Electronic Data Interchange shipping bill is paramount in the system. The refund of IGST is processed as mandated under section 54 read with Rule 96 of the Central Goods and Service Tax Act, 2017.*
> *2. Since there was a mis-match resulting in short shipment in the number of packages in the Shipping Bill No.9663177 dated 2/11/17,*

the above shipping bill was not processed for refund. Subsequently, the petitioner through their Customs House Agent dt.25/1/2019 requested to issue export certificates carrying out the correction which was issued on 11/02/2019. Since the Customs House Agent had not re-registered the amended/corrected export order/shipping bill within 15 days the said shipping bill / let export order purged and the refund was not processed.

3. Efforts were made to retrieve the shipping bill by writing to DG (Systems) through Joint Commissioner (EDI). The ADC (Systems) informed that the retrival of shipping bill is not possible. It is humbly submitted that the Customs has already issued the proof of Export vide Export Certificate dated 11.02.2019. It is prayed to pass such orders as may be deemed fit in the circumstances of the case."

5. The petitioner relies on a decision in the case of *Abi Technologies vs The Assistant Commissioner of Customs, Tuticorin* [2022 (5) TMI 1136] wherein the prayer was for a mandamus directing the respondents to sanction a particular sum as refund. That matter is distinguishable in light of the factual finding returned by the learned Judge to the effect that all details had been furnished by that petitioner correctly in the relevant forms and it was entitled for the refund sought. In the present case, the stuffing report admittedly contains an error.

6. I thus find no legal infirmity in the impugned order and dismiss this writ petition. The petitioner is always at liberty to follow

the procedure as set out in the Act and applicable Regulations and obtain relief as appropriate from the authorities, in accordance with law. No costs.

13.03.2023

Index:Yes/No
Neutral Citation:Yes
ssm

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DR. ANITA SUMANTH,J.

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