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W.P.Nos.8444 & 8446 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.8444 & 8446 of 2022

and

W.M.P.Nos.8388, 8389 & 8391 of 2022

M/s.R.S.R.Exports,
Represented by its Proprietor,
Shri.R.Selvaraj,
Ground Floor, Old No.126, New No.22,
New Street, Mannady,
Chennai – 600 001.

... Petitioner in
both W.Ps.

Vs.

1. Deputy Commissioner of Customs (BRC-DBK),
Chennai IV Commissionerate,
Custom House, No.60. Rajaji Salai,
Chennai – 600 001.

2. Assistant Commissioner of Customs (Arrear Recovery Cell),
Chennai IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

... Respondents
in both W.Ps.



W.P.Nos.8444 & 8446 of 2022

Prayer in W.P.No.8444 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records pertaining to the impugned Order-in-Original No.83898/2021 dated 16.04.2021 in F.No.S.Misc.2/594/2016-DBK of the first respondent and quash the same.

Prayer in W.P.No.8446 of 2022: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records pertaining to the impugned letter dated 16.02.2022 in F.No.ARC-867/2021-CH-IV (DBK-issue) issued by the second respondent and quash the same.

For Petitioner : Mr.P.Rajkumar
(in both W.Ps.)

For Respondents : Mr.Mohana Murali
Senior Panel Counsel
(in both W.Ps)

COMMON ORDER

By this common order both the writ petitions are being disposed of.

2. In W.P.No.8444 of 2022, the petitioner is aggrieved by the Impugned Order-in-Original No.83898 of 2021 dated 16.04.2021, which is said to have been despatched to the petitioner on 27.04.2021. In W.P.No.8446 of 2022, the petitioner has challenged the Impugned Recovery



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Notice dated 16.02.2022.

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3. A brief facts of the case are that the petitioner, an exporter of Pooja Items had exported goods and claims Duty Drawback between 2004 and 2014.

4. According to the petitioner, on the exports made by the petitioner there were also new foreign remittance of foreign exchange and that the petitioner had satisfied with the requirements under the Duty Drawback Scheme as it stood under Section 75 of the Customs Act, 1962 read with Rule 16A (2) and (3) of the Customs Central Excise Duties and Service Tax Drawback and Rule 16 of Drawback Rules, 1995.

5 It is submitted that the petitioner has also obtained a statement from his banker stating that he has received foreign inward remittance certificate on the export made by the petitioner.

6. It is further submitted that the petitioner had been served with the Show Cause Notice dated 29.03.2017 and that during the pendency of the



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Show Cause proceedings, the petitioner changed the place of his business from Old.No.70, New No.137, Coral Merchant Street, Mannady, Chennai, Tamil Nadu – 600 001 to New.No.22 (Old.No.126), New street, Mannady, Chennai – 600 001.

7. It is submitted that this is also reflected in the website and that the Department is also aware of the change of address.

8. It is further submitted that even though the petitioner had replied to the Show Cause Notice on 17.04.2017, the first respondent passed an impugned order by stating that the petitioner has neither appeared for personal hearing nor given any reply.

9.It is also submitted that the Department had also issued a Public Notice No.2 of 2018 dated 08.01.2018, bearing reference: F.No.S.Misc.36/26/2015-BRC(DBK), wherein the context of recovery of drawback in non-realization of exports procedure, certain instructions were issued by the Commissionerate and that the petitioner failed to comply with the same.



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WEB COPY 10. It is therefore submitted that had the respondent considered the Certificate issued by the bankers and the reply of the petitioner dated 17.04.2017, the respondent would have dropped the proceedings instead the impugned order has been passed.

11. That apart, it is submitted that though the impugned order is addressed to the petitioner's old address, the recovery notice of the second respondent dated 16.02.2022, has been correctly addressed to the new address. This shows that there has been large scale irregularity committed by the respondents while passing the impugned order seeking to recover the amount.

12. Per contra, learned Senior Panel Counsel appearing on behalf of the respondents submits that the impugned order is well reasoned and requires no interference.

13. It is submitted that more than three opportunities had been given for the petitioner to appear for personal hearing. However, the petitioner



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failed to appear and therefore, the case was decided *ex-parte*.

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14. I have considered the arguments advanced by the learned counsel appearing for the petitioner and the learned Senior Panel Counsel appearing on behalf of the respondents.

15. In my view, the impugned order is unsustainable, particularly in the light of the fact that the petitioner has replied to the Show Cause Notice and furnished a Nil Certificate from the bankers.

16. *Prima facie*, it appears that the demand that was proposed in the Show Cause Notice dated 29.03.2017, was unsustainable and ought to have been dropped.

17. In any event, the matter would require a detailed consideration by the first respondent, who has passed an *ex-parte* order. The order is also unreasoned and does not contain any reasons. It also does not alludes to the reply of the petitioner dated 17.04.2017.



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18. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondents to pass a fresh order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

19. It is needless to state that the petitioner is at liberty to file additional representation, if any, at the time of personal hearing.

20. Both the writ petitions stand allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

05.07.2023

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No

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C.SARAVANAN, J.

rgm

To

1. The Deputy Commissioner of Customs (BRC-DBK),
Chennai IV Commissionerate,
Custom House, No.60. Rajaji Salai,
Chennai – 600 001.
2. The Assistant Commissioner of Customs (Arrear Recovery Cell),
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