



W.P.Nos.8648, 8865, 8650, 8869 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.8648, 8865, 8650, 8869 of 2022

and

**W.M.P.Nos.8695, 8696, 8566, 8567, 8568,
8701, 8703, 24234 and 24233 of 2022**

W.P.No.8648 of 2022:

M/s.Fusion Clothing Company
rep. by its Partner,
Shri.Shishir Goenka,
6, I Floor, Sunrise Venetia 168/172-A,
JSS Road,
Girgaum,
Mumbai - 400 004.

...Petitioner

Vs.

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



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

...Respondents

W.P.No.8865 of 2022:

M/s.Flexion Imaging Solutions Private Limited
rep. by its Liquidator,
Shri P.Sriram,
No.10, Shankaralaya,
R.K. Nagar III Cross Street,
R.A. Puram,
Chennai,
Tamil Nadu - 600 028.

...Petitioner

Vs.

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 (Arrears Recovery Cell),
Chennai IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

...Respondents



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W.P.No.8650 of 2022:

M/s.Fusion Clothing Company
rep. by its Partner,
Shri.Shishir Goenka,
6, I Floor, Sunrise Venetia 168/172-A,
JSS Road,
Girgaum,
Mumbai - 400 004.

...Petitioner

Vs.

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 (Arrears Recovery Cell),
Chennai IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

...Respondents

W.P.No.8869 of 2022:

M/s.Flexion Imaging Solutions Private Limited
rep. by its Liquidator,
Shri P.Sriram,
No.10, Shankaralaya,
R.K. Nagar III Cross Street,
R.A. Puram,
Chennai,
Tamil Nadu - 600 028.

...Petitioner



W.P.Nos.8648, 8865, 8650, 8869 of 2022

Vs.

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

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

...Respondents

Prayer in W.P.No.8648 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order - in - original No. 82340 / 2021 dated 27.03.2021 in F. No. S. Misc 2/ 409 / 2016 DBK of the 1st Respondent and quash the same.

Prayer in W.P.No.8865 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order - in - original No. 82466/ 2021 dated 27.03.2021 in F. No. S. Misc 2/ 248 / 2016 (DBK) passed by the 1st respondent and quash the same.



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Prayer in W.P.No.8650 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned letter dated 16.02.2022 in F.No. ARC-857/2021-CH-IV (DBK - issue) issued by the 2nd respondent and quash the same.

Prayer in W.P.No.8869 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned recovery notice dated 05.01.2022 of the 2nd respondent issued in F.No.ARC-632/2021-CH-IV and quash the same.

For Petitioner : Mr. Hari Radhakrishnan
in all petitions

For Respondents : Mr.Hema Muralikrishnan,
Senior Counsel
in W.P.Nos.8648 and 8650 of 2022

Mr.K.Umesh Rao,
SCGSC
in W.P.Nos.8865 and 8869 of 2022



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COMMON ORDER

W.P.Nos.8648 and 8865 of 2022 have been filed challenging the adjudication order passed by the 1st respondent dated 29.03.2021 and 27.03.2021, respectively.

2.W.P.Nos.8650 and 8869 of 2022 have been filed challenging the recovery notice both dated 16.02.2022 and 05.01.2022 issued by the 2nd respondent.

3.The brief facts of the case is that the petitioner is the exporter of the goods and by virtue of Drawback Scheme the petitioner availed the duty Drawback. Further, he would submit that they also received the entire sale consideration by virtue of foreign exchange. In this regard, they also submitted the relevant documents to the Authorities on 03.04.2017, 28.06.2019 and 04.04.2017.



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4. In these circumstances, the Authorities issued a public notice on 08.01.2018 which was uploaded in the Website requesting all the assesseees to file the relevant documents with regard to the proof of receipt of the sale consideration. The case of the petitioner is that they have already submitted all the relevant documents.

5. To the utter shock and surprise, the 1st respondent passed the adjudication order dated 29.03.2021 and 27.03.2021 stating that the exporter neither responded to the letter dated 15.03.2001 nor appeared for the hearing dates. Public notice was issued only with regard to the submission of the receipt of the sale consideration. As per the duty Drawback scheme, the petitioners are entitled to the duty Drawback. Accordingly, they received the entire sale consideration. Without considering the same, the Authorities passed the adjudication order and issued recovery notice which are under challenge.



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6.The learned counsel appearing for the respondents fairly submitted that the respondents received the sale consideration and the relevant documents have been submitted to the Authorities.

7.In these circumstances, this Court is of the considered view that in the present case, the proof of receipt of the sale consideration was filed on 03.04.2017, 28.06.2019 and on 04.04.2017 and it is for the Department to verify the sale consideration received. Since in both the adjudication order and the recovery notice they have not mentioned about these particulars, this Court also accepts the contention of the learned counsel appearing on either side. Therefore, the matter is remitted back to the respondents for fresh consideration after taking into consideration the documents filed by the petitioners. Accordingly, this Court is inclined to set aside the order of the respondents. While setting



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aside the same, the matter is remitted back to the respondents for re-adjudication, after considering the documents filed by the petitioners dated 03.04.2017, 28.06.2019 and 04.04.2017.

These Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.10.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
mps

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 (Arrears Recovery Cell),
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KRISHNAN RAMASAMY, J.

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