



WEB COPY



W.P. No.14086 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14086 of 2021 and
W.M.P. No.14961 of 2021

M/s.Orient Express,
Represented by its Partner
Mr.R.Sekar,
Formerly at 26B, Jawaharlal Nehru Salai,
Ekkaduthangal,
Chennai 600 097,
presently at No.A3, Gopalam Apartments,
15/33, Circular Road,
United India Colony, Kodambakkam,
Chennai 600 024.

.. Petitioner

Vs.

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

..Respondent

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 impugned order passed by the Respondent in the File No.S.Misc.2/4624/2016-DBK of the Respondent pertaining to the impugned Order-in-Original No.82035/2021 dated 24.03.2021 and quash the same as arbitrary and violative



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of principles of natural justice and consequently to direct the Respondent to drop the demand for recovery of the availed drawback amounting to Rs.3,20,415/-, taking into consideration the letter dated 18.09.2015 submitted by the Petitioner containing BRC/Negative statement.

For Petitioner : Ms.P.Jayalakshmi

For Respondent : Mr.Rajendran Raghavan
SCGSC

ORDER

The writ petition is filed challenging the impugned order dated 24.03.2021 disallowing the drawback for the exported goods for the period 2004 - 2014 on the premise that the same has been made on the basis that the petitioner has neither replied to the show cause notice nor appeared in person to submit the proof of realization of export proceeds for the export consignment in respect of the relevant shipping bills as could be seen from the relevant portions of the impugned order :

"11. The exporter neither replied to the Show Cause Notice nor appeared in person to submit the proof of realization of export proceeds (Negative Statements / BRCs) for the export consignments exported for the above mentioned Shipping Bills. Therefore, I decide this case ex-parte based on available records. Since the exported has not submitted any proof of realization of export proceeds. I hold that the export proceeds pertaining to the export consignments exported vide aforementioned shipping bills have not been realized."



2. It is submitted by the learned counsel for the petitioner that the petitioner had responded to the show cause notice dated 11.09.2017 vide letter dated 19.09.2017 wherein the petitioner states that he had submitted negative statements up to the period 30.06.2016 at the Air Cargo Complex, Meenambakkam, Chennai. Insofar as the personal hearing, it was submitted that the same was intimated by the respondent vide communication dated 17.11.2020 to which the petitioner had responded vide letter dated 28.11.2020. It was thus submitted that the impugned order of assessment is made completely overlooking the submission made as would be evident from the following extracts in the impugned order:-

“However, the exporter has not responded, in spite of several opportunities given to appear in person and / or through his authorized representative to produce evidence for the sale proceeds in respect of the above mentioned shipping bills. Further, Personal Hearing were issued to the exporter vide letter dated 17.11.2020 in F.No.S.Misc.2/4624/2016-DBK(BRC) giving 01.12.2020, 02.12.2020, 03.12.2020 as dates for scheduled PH. However, the exporter has neither responded to the said PH letter dated 17.11.2020 nor appeared for aforementioned hearing dates. Hence this case is decided ex parte based on records available on file.”

3. The learned counsel for the respondent would however submit that the details furnished by the petitioner are inadequate / incomplete. I do not propose to get into the merits of the claim as to whether the submissions are supported by valid documents or otherwise. However, there is merit in the submissions made by the learned counsel for the petitioner that the impugned order has been



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made completely disregarding / overlooking the objections and also the response to the personal hearing inasmuch as the impugned order proceeds as though no objections were filed.

4. In view of the same, the impugned order suffers from non-application of mind and thus the matter is remanded back to the Assessing Authority. It is open to the petitioner to submit their response with supporting documents within a period of 4 weeks from the date of receipt of a copy of this order and the same would be considered and orders would be passed after affording the petitioner adequate opportunity in accordance with law, within a period of 8 weeks thereafter.

5. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2023

Speaking (or) Non Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
spp/shk



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To:

The Deputy Commissioner of Customs (BRC-DBK)
Office of the Commissioner of Customs, Chennai - IV,
No.60, Customs House,
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MOHAMMED SHAFFIQ, J.

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