IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22194 of 2023

M/s.DJ Apparels,
Represented by its Proprietor D.Udhya Krishnan ... Petitioner

Vs.

1.The Chief Customs Commissioner,
No.60, Rajaji Salai,
Customs House,
Chennai - 600 001.

2.The Commissioner of Customs,
Office of the Commissioner of Customs,
Customs House, Tuticorin - 628 004.

3.M/s.City Union Bank Limited,
No.729, Ground Floor, Diamond Complex,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045.

4.M/s.Kotak Mahindra Bank Limited,
Skanda Square,
727, Avinshi Road,
Coimbatore - 641 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the second respondent to withdraw the recovery notice dated 16.02.2023 and issue suitable instruction to the third and fourth respondents to de-freeze the accounts bearing Nos.04910110007580 (SBA), 0647993079 (TDA), 4411212267 (CAA) with the fourth respondent/Kotak Mahindra Bank in the name D.Udhya Krishnan and DJ Apparels and Savings Account bearing No.500101013167811 with the third respondent/City Union Bank in the name of D.Udhya Krishnan by considering the petitioner's representation dated 22.04.2023 to the second respondent.

For Petitioner	:	Mr.R.Prabakar
For Respondents	:	
For R1 & R2	:	Mr.K.S.Ramaswamy Standing Counsel

ORDER

Mr.K.S.Ramaswamy, learned Standing Counsel takes notice on behalf of the first and second respondents.

2. The petitioner appears to have exported goods under various shipping bills during 2013 and had availed the benefit of duty draw back for an extent of Rs.7,08,373/-.

3. It is the specific case of the petitioner that the petitioner had closed on the business in the year 2015 itself and was unaware as to whether any proceedings were initiated against the petitioner to show cause as to why the benefit that was granted to the petitioner should not be recovered.

4. It is the specific case of the petitioner that the petitioner had realized the export proceeds and had also produced the relevant Bank Realization Certificates. However, the second respondent has proceeded to pass Order-in-Original No.1009 of 2020 dated 22.09.2020. This order was passed without proper service of notice to the petitioner as neither the Show Cause Notice mentioned therein dated 27.07.2018 nor the personal hearing notices fixing the hearing on 15.07.2020 or 29.07.2020 was received by the petitioner as the petitioner had shifted the place of business.

5. It is submitted that the petitioner came to know about the passing of the impugned order in Order-in-Original No.1009 of 2020 dated 22.09.2020, only after the second respondent has attached the petitioner's bank account with Kotak Mahindra Bank and City Union Bank.

6. The specific case of the petitioner is that the petitioner has realized the export proceeds and can produce all the proof even now.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the first and second respondents. I have also perused the impugned order.

8. The export incentives that was granted to the petitioner pursuant to the export made by the petitioner in the year 2013 was sought to be denied to the petitioner by issuing Show Cause Notice No.1087 of 2018 dated 27.07.2018, which has culminated in Order-in-Original No.1009 of 2020 dated 22.09.2020.

9. A reading of the order indicates that a hearing was fixed on 15.07.2020. An alternative date for personal hearing was also fixed to 29.07.2020, which is said to have been communicated to the petitioner on 08.06.2020.

10. Considering the fact that the personal hearing was held during the period when the entire country was under lock down and considering the fact that the petitioner had not replied to the Show Cause Notice dated 27.07.2018 and the personal hearing fixed on 15.07.2020/29.07.2020, the impugned order is set aside and the case is remitted the case back to the second respondent to pass a fresh order within a period of 45 days from the date of receipt of a copy of this order.

11. The petitioner shall file a additional reply/representation if any, together with all the relevant Bank Realization Certificates or Foreign Inward Remittance Certificate as the case may be before the second respondent.

12. Pending such exercise, the attachment of the respective bank accounts shall be lifted.

13. This Writ Petition stands allowed with the above observations. No costs.

27.07.2023

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

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To

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C.SARAVANAN, J.

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