IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.24464 of 2022
and
W.M.P.No.23421 of 2022

M/s.Texwin Impex
S.F.No.2/186, R.V.E.Nagar 1st Street,
Rakkiyapalayam Pirivu, Kangeyam Road,
Tirupur – 641 604.
Represented by its Proprietrix Mrs.Valliyathaal ... Petitioner

Vs

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

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

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Order in Original No.84139/2021 dated

27.04.2021 passed by the second respondent herein and to quash the same, in so far as, the said impugned order had been passed without jurisdiction and in excess of the authority conferred on the second respondent and also as against the provisions of law and in gross violation to the principles of natural justice.

For Petitioner	: Mr.S.Baskaran
For Respondent	: Mr.R.Gunaalan Junior Standing Counsel

ORDER

This is the second round of litigation. Earlier the petitioner had approached this Court in W.P.No.10660 of 2020. In the said writ petition, the petitioner had prayed for a Mandamus to direct the respondents herein to furnish a copy of the Impugned Order in Original herein.

2. Pursuant to order of this Court in W.P.No.10660 of 2022, the respondents have furnished a copy of the Order in Original herein on 15.07.2022. Therafter, the petitioner has filed this writ petition and has challenged the Impugned Order in Original No.84139 of 2021 dated 27.04.2021.

3. The learned counsel for the petitioner submits that the Impugned Order is not reasoned and hence, prayed for quashing of the Impugned Order.

4. It is submitted that the petitioner was issued with the Show Cause Notice dated 29.03.2017, to which the petitioner had replied on 06.06.2017.

5. It is submitted that despite the petitioner furnishing original Negative Statement duly certified by their Chartered Accountant, the Impugned Order has been passed in gross violation of principles of natural justice.

6. That apart, it is submitted that Impugned Order is also contrary to CBEC, New Delhi, Circular No.1053/02/2017-C.X., dated 10.03.2017, wherein, in paragraph 14.3, it has been clarified as under:

> *"**Personal hearing:** After having given a fair opportunity to the petitioner for replying to the Show Cause Notice, the adjudicting authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the petitioner may avail opportunity of being heard. Separate communications should be made to the petitioner for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a petitioner."*

7. The learned counsel for the petitioner has also drawn attention to the decision of the following cases, wherein the Court has interfered with the order passed without following the requirements of the above Circular of the Board :-

i. ***Regent Overseas Private Limited** vs. **Union of India,** 2017 (6) G.S.T.L.15 (Guj.);*
ii. ***M/s.M.L.Auto Enterprises** vs. **The Deputy Commissioner of Customs (UCC)**, W.P.No.25880 of 2021 dated 20.12.2021.*

8. That apart, it is submitted that the petitioner has exported the consignments between 2005 and 2016 and has realized the export proceeds and has also obtained necessary Bank Realization Certificate (BRC)/Foreign Inward Remittance Certificate (FIRC). Hence, legitimate export benefit granted to the petitioner for exporting the goods out of the country for earning previous foreign exchange, the petitioner has been penalized without following the principles of natural justice. Hence, prayed for appropriate order to quash the Impugned Order.

9. Per contra, learned Junior Standing Counsel for the respondents would submit that the writ petition is without any merits. The order was communicated to the petitioner at the address that was registered in the ICE Gate maintained by the Customs Department. Hence, it is submitted that the petitioner cannot claim that the Impugned Order was not communicated to the petitioner.

10. That apart, it is submitted that petitioner was also issued with Notice dated 29.03.2021, in the address that was furnished by the petitioner to the Customs Department on 29.03.2021. However, neither the petitioner filed any reply nor appeared for the personal hearing on the three days that were specified in the above hearing on 29.03.2021.

11. The learned Junior Standing Counsel for the respondents has drawn attention to Paragraph No.7 of the affidavit filed in support of the present writ petition, wherein, the petitioner has stated that the petitioner has submitted Bank Realization Certificate. However, in the typed set of papers, the petitioner has only filed Negative Statement by his Chartered Accountant along with letter dated 06.06.2017, in response to Show Cause Notice dated 29.03.2017. It is further submitted that the petitioner has also not asked for "Personal hearing".

12. Finally, the learned Junior Standing Counsel for the respondent would submit that even if the petitioner has filed a copy of the Negative Statement for the period between 01.01.2005 and 31.12.2016, the petitioner has neither filed nor produced copies of the Bank Realization Certificate/Foreign Inward Remittance Certificate (FIRC) even before this Court.

15. The submissions of the learned counsel for the petitioner as also the learned Junior Standing Counsel for the respondents are equally meritorious. At the same time, the fact remains that the Impugned Order has been passed without considering the response of the petitioner to the Impugned Show Cause Notice dated 29.03.2017, filed on 06.06.2017.

16. The Impugned Order also does not allude to the same. In the Impugned Order there are only three paragraphs, which reads as under:

"10. I have carefully gone through the records of this case.

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 exporter 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.

12. Therefore, I pass the following order:

ORDER

I confirm the demand made against M/s.TEXWIN IMPEX, (IEC No:3202005006), for recovery of availed drawback amounting to Rs.26,34,689/- (Rupees Twenty Six Lakh Thirty Four Thousand Six Hundred Eighty Nine Only) against shipping bills mentioned in Table-1 as detailed therein under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 along with applicable interest under Section 75A (2) of the Customs Act, 1962. I also impose a penalty of Rs.1,00,000 (Rupees One Lakh Only) on the exporter under Section 117 of the Customs Act, 1962."

17. Thus, the Impugned Order is not a speaking order. It is therefore liable to be set quash and the case is liable to be remitted back to the second respondent to pass a speaking order on merits within a period of sixty (60) days from the date of receipt of a copy of this order.

18. The petitioner shall file a copy of the Bank Realization Certificate/Foreign Inward Remittance Certificate (FIRC) as the case may be to substantiate that indeed the petitioner has realized the export proceeds on the export made by the petitioner between 2005 and 2016 for which duty drawback was sanctioned.

19. The writ petition stands disposed of with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

12.07.2023

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

C.SARAVANAN, J.

rgm

To

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   Arrear Recovery Cell (Chennai – IV),
   Office of the Commissioner of Customs, Chennai IV,
   No.60, Rajaji Salai, Customs House,
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