



W.P. (MD) No. 3662 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 02.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 3662 of 2023

and

W.M.P. (MD) Nos. 3428 & 3431 of 2023

M/s.Rasul Exports,
(Represented by its Proprietor Mr.M.Zeelan),
96, South Perumal Maistry Street,
Madurai-625 001.

... Petitioner

Vs.

- 1.The Commissioner,
Custom House,
Tuticorin-628 004.
- 2.The Assistant Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House, Tuticorin-628 004.
- 3.The Assistant Commissioner of Customs,
Arrears Recovery Cell (ARC),
Office of the Commissioner of Customs,
Custom House, Tuticorin-628 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India,
to issue a Writ of Certiorarified Mandamus, calling for the records pertaining



W.P. (MD) No. 3662 of 2023

to the impugned order in original No.1107 of 2020 dated 22.09.2020 of the second respondent and quash the same and consequently direct the respondents 1 to 3 to refund the sum of Rs.4,53,458/- (Rs.43,090.21/-+Rs. 1,32,560/-+Rs.2,77,807.95) collected by debiting from the Petitioner's Accounts maintained with Tamil Nadu Mercantile Bank, Madurai Main Branch and City Union Bank, Villapuram Branch.

For Petitioner : Mr. A.Mohamed Ismail
For Respondents : Mr. R.Nandakumar
Senior Panel Counsel

ORDER

Heard Mr. A.Mohamed Ismail, Learned Counsel appearing for the Petitioner and Mr. R.Nandakumar, Learned Senior Panel Counsel for the Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner in the Writ Petition is that the Respondents have recovered aggregate sum of Rs. 4,53,458/- from the bank accounts of the Petitioner with Tamil Nadu Mercantile Bank, Madurai Branch and City Union Bank, Villupuram Branch towards alleged dues in



W.P. (MD) No. 3662 of 2023

terms of the order in Original No. 1107 of 2020 dated 22.09.2020 passed by the Second Respondent without serving a copy of that order to the Petitioner till date.

3. Learned Counsel for the Respondents, on instructions, states that the order in Original No. 1107 of 2020 dated 22.09.2020 was sent by speed post to the Petitioner at his address at Rasul Exports, No. 96, South Perumal Maistry Street, Madurai, Tamil Nadu – 625 001, but it had been returned unserved with a postal endorsement 'Door Locked No such addressee'.

4. At this juncture, reference has to be made to the authoritative pronouncement of the Hon'ble Supreme Court of India in ***Collector of Central Excise, Madras -vs- M/s. M.M. Rubber and Co., Tamil Nadu*** reported in [(1992) Supp (1) SCC 471] where the date from which limitation has to be reckoned for the purpose of filing appeal against an order by an aggrieved person, has been explained as follows:-



“12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made : that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.



13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by **Rajmannar, C.J. in Muthia Chettiar -vs- CIT [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402]** “a salutary and just principle”. The application of this rule so



far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law.

....

18. Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of suo moto power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the government is bound by the proceedings of its officers but persons affected are not concluded by the decision."

In view of the aforesaid legal position, the Respondents shall serve another



W.P. (MD) No. 3662 of 2023

copy of the order in Original No. 1107 of 2020 dated 22.09.2020 to the Petitioner under written acknowledgment, so as to enable him to prefer appeal against that order before the Appellate Authority viz., Commissioner of Customs (Appeals), No. 1, Williams Road, Cantonment, Trichy – 1, as mentioned in the impugned order. On receipt of the copy of that order, the Petitioner may prefer appeal against the said order before the Appellate Authority and seek appropriate relief including return of any excess amounts recovered from the bank accounts of the Petitioner.

5. In the event of the Respondents failing to serve a copy of the order in Original No. 1107 of 2020 dated 22.09.2020 to the Petitioner by 30.06.2023, it shall be treated that the recovery of Rs. 4,53,458/- made in pursuance of that unserved order has been without any authority of law, and the Respondents shall immediately refund the said amount with interest at the rate of 6% per annum from the date of collection till its return under written acknowledgment and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.



W.P. (MD) No. 3662 of 2023

WEB COPY

In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

02.03.2023

Index : Yes/No

Internet : Yes/No

ta

Note: Issue order copy by 16.06.2023.

To

- 1.The Commissioner,
Custom House,
Tuticorin-628 004.
- 2.The Assistant Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House, Tuticorin-628 004.
- 3.The Assistant Commissioner of Customs,
Arrears Recovery Cell (ARC),
Office of the Commissioner of Customs,
Custom House, Tuticorin-628 004.



WEB COPY



W.P. (MD) No. 3662 of 2023

P.D.AUDIKESAVALU,J.

ta

W.P. (MD) No. 3662 of 2023

02.03.2023