IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 21.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.3821 of 2024
and W.M.P.No.4138 of 2024

M/s.Dhanalakshmi Industries
rep. by itsProprietor,
Mr.A.Magesh,
No.1/938, Venkateswara Nagar Main Road,
Perungudi Industrial Estate,
Kanchipuram-600 096. ... Petitioner

-vs-

The Deputy Commissioner of Customs,
Drawback-Air,
New Custom House, Meenambakkam,
Chennai-600 027. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the impugned order in- original no.1153/2023-AIR dated 15.09.2023 passed by the respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam
For Respondent : Mr.V.Sundareswaran, Sr.Standing counsel

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ORDER

The petitioner challenges the order dated 15.09.2023, by which it was held that the liability of Rs.11,54,531/- towards the recovery of additional drawback in respect of 89 shipping bills mentioned in paragraph no.1 of the said order is confirmed.

2.The petitioner is the son of the late N.Arumugam, who was an exporter of industrial gaskets. The petitioner asserts that the entire export proceeds pertaining to above mentioned 83 shipping bills were realized by his father.

3.By pointing out that his father died on 23.02.2022 and that the impugned order was issued thereafter to a dead person, such order is assailed.

4.Mr.V.Sundareswaran, learned senior standing counsel, appears on behalf of the respondent. He submits that the impugned order was issued on 15.09.2023, whereas the petitioner approached this Court in January 2024. He also submits that the second proviso to sub section (1) of Section 75 of the Customs Act 1962, incorporates a legal fiction by which duty draw back is deemed to have never been allowed if the sale proceeds are not received by exporters within the time specified. He also submits that a notice was issued to the exporter at the current address of the petitioner.

5.The documents on record include the death certificate of the late N.Arumugam. The said death certificate indicates that he died on 23.02.2022, which predates the impugned assessment order. Therefore, the impugned assessment order cannot be sustained. The petitioner has also placed on record the Legal Heirship Certificate in respect of the late N.Arumugam and such certificate indicates the names of Mrs.A.Dhanalakshmi (his wife), Ms.A.Menaga Devi (his daughter) and Mr.A.Magesh (his son) as his Class I legal heirs. In view of the demise of the exporter, further proceedings should be conducted against all his Class I legal heirs.

6.For the reasons set out above, the impugned order is quashed by leaving it open to the respondent to initiate fresh proceedings against the legal heirs of the late N.Arumugam. If such proceedings are initiated, it is open to such legal heirs to raise all contentions.

7. W.P.No.3821 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.4138 of 2024 is closed.

21.02.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The Deputy Commissioner of Customs,
Drawback-Air,
New Custom House, Meenambakkam,
Chennai-600 027.

SENTHILKUMAR RAMAMOORTHY,J

dn

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