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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.2088 of 2024
and W.M.P.No.2235 of 2024

M/S.Statco Exports Pvt.ltd
rep. by its Director Mr. Arup Aditya, X-11/F
(Old no. X-24/F) Park towers, Anna nagar
Chennai 40. ... Petitioner

-vs-

1.The Commissioner of Customs (Exports)
Office of the Commissioner of Customs, Chennai IV,
Custom house, no. 60 Rajaji salai, Chennai 01.

2.The Deputy Commissioner of Customs
(EDC), Office of the Commissioner of Customs, Chennai IV,
Custom house, no. 60 Rajaji Salai, Chennai 01.

3.The Assistant Commissioner of Customs
(Arrears recovery cell), Export Commissionerate,
Office of Commissioner of Customs, Chennai IV,
Custom house, no. 60 Rajaji salai,
Chennai 01. ... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus,calling for the records pertaining to the impugned Order- In-Original No. 89584 / 2022 in F.No. S.Misc. 2/ 1802/ 2016- DBK, Job No. 88583/ 2022 DIN- 20220473HZ000081818D dated 13.04.2022 passed by the 2nd respondent and to quash the same as illegal, arbitrary , unfair, unreasonable and in clear violation of principles of natural justice and further direct the 2nd respondent herein to rehear and dispose off the same on merits after affording an opportunity of Personal Hearing and accepting the Statement of Bank Realization/ BRC/ Negative Statement issued by the Chartered Accountant already furnished by the petitioner herein vide Reply to the Show Cause Notice dated 7.08.2017 itself towards the demand for availed Drawback claim .

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Ms.Anu Ganesan, Jr. PC

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ORDER

The petitioner assails an order in original dated 13.04.2022 concluding that the petitioner had not submitted any proof of realization of export proceeds and that, therefore, the export proceeds pertaining to the shipping bills set out in Table-1 of the impugned order were not realized.

2. Learned counsel for the petitioner submits that the petitioner had exported garments to France, Canada, Macau, Chile, USA and Durban under 21 shipping bills, as per details set out in paragraph 3 of the affidavit. By pointing out that such export was made by availing benefit of the duty draw back scheme, learned counsel submitted that the sale proceeds were realized in foreign exchange. He further submits that the bank realization certificates (BRCs) pertaining thereto were obtained and submitted. In addition, he submits that the Directorate General of Foreign Trade also issued

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certificates in respect of each shipping bill indicating that the export proceeds were realized in foreign exchange. He also submits that the petitioner's Chartered Accountant provided negative statements in respect of each shipping bill. Thus, he submits that the impugned order calls for interference.

3. In response, learned Junior standing counsel for the Customs Department submits that neither the BRCs nor the negative statements are available in the files of the adjudicating authority. If such documents are submitted by the petitioner, learned counsel submits that the adjudicating authority would re-consider the matter.

4. The petitioner has placed on record the negative statements issued by Balaji and Company, Chartered Accountants, for all 21 shipping bills. The petitioner has also placed on record BRCs corresponding to the 21 shipping bills and statements of bank realization issued by the Directorate General of Foreign Trade.

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5. In view of the above documents being available, the impugned order, wherein it was concluded that the exporter did not submit proof of realization of export proceeds cannot be sustained. Consequently, the impugned order is quashed. As a corollary, the matter is remanded for re-consideration by the first respondent. The petitioner is permitted to re-submit the BRCs, negative statements and statements of bank realization of the Directorate General of Foreign Trade to the first respondent within a period of ***three weeks*** from the date of receipt of a copy of this order. After providing a reasonable opportunity to the petitioner, including a personal hearing, the second respondent is directed to dispose of the matter within a period of ***one month*** from the date of receipt of relevant documents.

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6. W.P.No.2088 of 2024 is allowed on the above terms. No costs. Consequently, W.M.P.No.2235 is closed.

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

To

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