



W.P.No.3393 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.3393 of 2024
and W.M.P.Nos.3650 & 3652 of 2024

Tvl.Riba International,
Represented by its Manager
B.Vijaya Kumar
28- Amman Nagar 1st Street,
Imayam Nagar West,
S.Alangulam, Madurai 625 017.

... Petitioner

-vs-

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

2.The Commissioner of Customs
Arrear Recovery Cell
Chennai-IV Commissionerate, (BRC-DBK)
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the impugned proceedings of the first respondent in Order-In-Original No.77347/2020- F.No.S.Misc.2/3409/2016 - DBK dated 19.11.2020 received on 08.08.2023, quash the same.

For Petitioner : Mr.S.Raveekumar for Ms.V.Usha

For Respondents : Mr.Avinash Wadhwani, Jr. SC

ORDER

The petitioner challenges an order dated 19.11.2020 by which it was concluded that export proceeds pertaining to eight shipping bills were not realized by the petitioner and that, consequently, the petitioner was liable to pay sums equivalent to the duty draw back availed along with penalty.

2. The petitioner is engaged in the business of exporting cotton products, coir mats and similar goods. It is stated by the petitioner that a communication was received from the first respondent on



09.01.2007 calling upon the petitioner to submit the bank realization certificates (BRCs) for shipping bills of the financial year 2004-05. By reply dated 06.03.2007, the petitioner informed the respondents that the BRCs were provided in August 2005. The petitioner also enclosed the BRCs with such communication. The petitioner further states that by a reply dated 12.09.2017 to the first respondent negative certificates from the Chartered Accountant were provided for the period from 2004 to 2013. In these circumstances, it is stated that proceedings were initiated against the petitioner after the lapse of considerable time and that such proceedings culminated in the impugned order.

3. Learned counsel for the petitioner challenges the impugned order on multiple grounds. First, he submits that the order was issued after the period of limitation. Secondly, he submits that the order was issued in breach of principles of natural justice in as much as the petitioner did not receive the notice and order relating to such



proceedings until 08.08.2023. He also submits that the petitioner had already provided the BRCs and negative certificates and that, therefore, the order is liable to be quashed.

4. Mr.Avinash Wadhwani, learned junior standing counsel, accepts notice on behalf of the respondents. He submits that the petitioner may be provided a reasonable opportunity in view of the observation in the order that the notice was returned with the endorsement “left”.

5. The petitioner has placed on record the communication dated 23.09.2010 enclosing BRCs. A communication dated 12.09.2017 enclosing negative certificates from the Chartered Accountant is also placed on record. Therefore, the conclusion in the order that the petitioner has not provided any proof of realization of export proceeds cannot be sustained because such conclusion was drawn by disregarding documents submitted by the petitioner previously.



Even otherwise, the petitioner was not provided a reasonable opportunity.

6. For reasons set out above, the impugned order is quashed and the matter is remanded for re-consideration. The first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a maximum period of *two months* from the date of receipt of a copy of this order. It is open to the petitioner to raise all contentions before the first respondent.

7. W.P.No.3393 of 2024 is disposed of on the above terms. Consequently, W.M.P.Nos.3650 and 3652 of 2024 are closed.

16.02.2024

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



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SENTHILKUMAR RAMAMOORTHY,J

rna

To

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