IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9773 of 2022
and
W.M.P.No.9492 of 2022

M/s.Asian Fabrics,
(Now known as M/s.Asian Fabricx
Private Limited) ... Petitioner

Vs.

1.The Deputy Commissioner of Customs (BRC-DBK),
Office of the Commissioner of Customs,
Customs House,
60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs,
Arrear Recovery Cell (Chennai-IV),
Office of the Commissioner of Customs,
Customs House,
60, Rajaji Salai,
Chennai – 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in the Impugned Order-in-Original No.82346/2021 dated 27.03.2021, quash the same as it has been passed without considering the details submitted by the petitioner and against the principles of natural justice.

For Petitioner	:	Ms.Radhika Chandra Sekhar
For Respondents	:	Mr.K.Mohana Murali Senior Standing Counsel

ORDER

This Writ Petition is of the year 2022.

2. The petitioner is before this Court against the Impugned Order-in-Original No.82346/2021 dated 27.03.2021.

3. The petitioner is challenging the Impugned Order primarily on the ground of violation of principles of natural justice.

4. The facts on record indicates that the petitioner had exported goods between 2004 and 2008 and had claimed duty drawback under Section 75 of the Customs Act, 1962 read with the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

5. Long after the exports were made and the duty drawback was sanctioned to the petitioner, a notice under Section 75(1) of the Customs Act, 1962 was issued to the petitioner on 27.03.2017, calling upon the petitioner to show cause as to why the duty drawback sanctioned to the petitioner should not be cancelled and the amount paid should not be recovered as the petitioner had failed to produce necessary Bank Realization Certificates. The petitioner was thereafter issued with a Personal Hearing Notice dated 15.05.2017 fixing the personal hearing on 23.05.2017.

6. It is the case of the petitioner that on 23.05.2017, the petitioner appeared before the first respondent and undertook to file necessary Bank Realization Certificates on the exports made during 2004 and 2008 and had indeed filed the same on 30.05.2017.

7. In this connection, the learned counsel for the petitioner has drawn attention to the copy of the aforesaid letter enclosing necessary Bank Realization Certificates issued by Canara Bank and the acknowledgment of the Customs Department dated 01.06.2017.

8. It is further submitted that thereafter the petitioner did not hear anything from the Department and thus on 15.03.2021, by second intimation to the petitioner, the first respondent fixed the following dates as alternate dates for personal hearing:

1	24.03.2021	11.00 A.M. To 4.00 P.M.
2	25.03.2021	11.00 A.M. To 4.00 P.M.
3	26.03.2021	11.00 A.M. To 4.00 P.M.

9. It appears that the petitioner failed to appear for personal hearings as the Country was still under intermittent lockdown due to second wave of Covid-19 pandemic (omicron). Thereafter, the first respondent had proceeded to pass the Impugned Order on 27.03.2021.

10. A reading of the Impugned Order indicates that there is a clear violation of the principles of natural justice as the Bank Realization Certificates purportedly filed by the petitioner on 30.05.2017 has not been considered while passing the Impugned Order, even if the petitioner is to be found fault with for not appearing for personal hearing on the date fixed for personal hearing in the Personal Hearing Notice dated 15.03.2021.

11. Under these circumstances, this Court is therefore left with no other option except to quash the Impugned Order and to remit the case back to the first respondent to pass a fresh order on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

12. The petitioner is directed to file additional reply if any, before the date that may be fixed by the first respondent.

13. Needless to state, before passing such order, the petitioner shall be heard.

14. This Writ Petition is disposed of with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

19.09.2024

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

arb

C.SARAVANAN, J.

arb

To

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