IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.10888 of 2022
and
W.M.P.Nos.10506 and 10507 of 2022

M/s.Kishore Apparels Private Ltd.,
Represented by its Director,
G.3, Hauz Khas,
New Delhi – 110 016. ... Petitioner

Vs.

The Deputy Commissioner of Customs,
BRC/Drawback,
Office of the Commissioner of Customs
Chennai IV,
Krishna Block,
Rajaji Salai,
Chennai – 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the Respondent herein in F.No.S.Misc.2/553/2016-DBK and order in original 83947/2021 dated 26.04.2021 and quash the same and consequently direct the respondent to give an opportunity of being heard to the petitioner.

For Petitioner : Mr.A.Ganesh

For Respondents : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

The Petitioner is before this Court against the Impugned Order in Original No.83947 of 2021 passed by the Respondent on 26.04.2021. The Impugned Order precedes the personal hearing notice to the Petitioner on 15.03.2021 in F.No.S.Misc.2/553/2016-DBK (BRC) giving three alternate dates for personal hearing on 24.03.2021, 25.03.2021 and 26.03.2021 as scheduled dates of personal hearing.

2. This was pursuant to Public Notice No.02/2018 dated 08.01.2018 issued by the Commissioner of Customs Chennai – IV, wherein common personal hearing notice was notified to all the exporters who had purportedly not realized for the exports made during 2004-2014.

3. The Petitioner has challenged the Impugned Order in Original on the ground that the Petitioner could not appear as the country was still under the grip of second wave of Covid-19 (Omicron) and therefore, Petitioner could not appear.

4. That apart, it is submitted that the Impugned Order has also been passed in violation of the mandate of Section 122A of the Customs Act, 1962.

5. The learned Senior Standing Counsel for the Respondent on the other hand would submit that the Petitioner was issued with the Show Cause Notice as early as on 28.03.2017. The Petitioner however failed to reply.

6. On the other hand, the learned counsel for the Petitioner would submit that the Petitioner had indeed given the Negative Certificate as early as on 28.07.2017. Reading of the Impugned Order indicates that the Impugned Order has been passed in a hurry pursuant to the personal hearing notice dated 15.03.2021 during the time when the country was under the second wave of Covid-19 (Omicron).

7. The Impugned Order has also failed to note letter purportedly filed

by the Petitioner including Negative Certificate regarding realization on the exports made by the Petitioner for which the Petitioner was given duty drawback.

8. That being the case, Court is of the view that the Impugned Order is liable to be quashed. Accordingly the Impugned Order is quashed. The case is remitted back to the Respondent to pass a fresh orders on merits and in accordance with law within a period of three (3) months from the date of receipt of a copy of this Order since the exports are between 2004-2010. The Petitioner shall be however heard before the final Orders are passed. The Petitioner shall also file a reply if any within a time that may be stipulated by the Respondent. The Respondent may proceed to pass Orders based on the available materials including the documents that have been filed before this Court along with the typed set of papers.

9. The Writ Petition stands disposed of with the above observations and directions. No cost. Consequently, connected miscellaneous petitions are

closed.

26.09.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

The Deputy Commissioner of Customs,
BRC/Drawback,
Office of the Commissioner of Customs
Chennai IV,
Krishna Block,
Rajaji Salai,
Chennai – 600 001.

C.SARAVANAN, J.

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