IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.10254 of 2022
and
W.M.P.Nos.9970 & 9971 of 2022

M/s.P.T.Exports
Rep.by its Proprietor
P.Thirunavukarasu ... Petitioner

vs.

1. The Commissioner of Customs (Exports),
Office of the Commissioner of Customs,
Chennai – IV, Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

2.The Deputy Commissioner of Customs (BRC-DBK),
Office of the Commissioner of Customs,
Chennai – IV, Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

3. The Assistant Commissioner of Customs,
Arrear Recovery Cell (Chennai IV),
Office of the Commissioner of Customs-IV,
Custom House, No.60, Rajaji Salai,
Chennai 600 001. ... Respondents

<u>Prayer :</u> Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Original No.82614/2021 in F.No.S.Misc.2/417/2016-DBK, DIN: 20210373MZ00000FF55, dated 30.03.2021, 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 to rehear and dispose off the same on merits after affording an opportunity of personal hearing and accepting the negative statement (Nil Report) Certificate/BRC already furnished by the petitioner for the impugned Shipping Bills.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.K.Mohanamurali
Senior Standing Counsel

<u>ORDER</u>

In this writ petition, the petitioner has challenged the Impugned Order in Original No.82614/2021 dated 30.03.2021 passed by the second respondent.

2. By the impugned order, the respondent has confirmed demand a sum of Rs.32,90,769/- being drawback sanctioned infavour of the petitioner in respect of the property (Negative Statements/BRCs).

3. Operative portion of the impugned order reads as under :-

> 10. I have carefully gone through the records of this case
> 11. The exporter neither replied to the Show Cause Notice nor appeared in person to submit the proof of realization of export proceeds (Negative Statements / BRCs) for the export consignments exported for the above mentioned Shipping Bils. Therefore. decide this case ex-parte based on available records. Since the exporter has not - submitted any proof of realization of export proceeds, I hold that the export proceeds pertaining to the export consignments exported vide aforementioned shipping pills have not been realized".

4. The learned counsel for the petitioner submits that the petitioner had produced all the documents before this Court to substantiate the realization of export proceeds. The petitioner had exported goods through various Shipping Bills in respect of which, the petitioner was sanctioned duly drawback under Section 75 of the Customs Act, 1962.

5. The learned Senior Standing Counsel for the respondents submits that the writ petition is devoid of merits and the petitioner has an alternate remedy under Section 128 of the Customs Act, 1962.

6. That apart, the learned Senior Standing Counsel for the respondents would further submit that the writ petition has been filed early in the year 2022 in respect of the orders that has been passed as early as 30.03.2021. Hence, it is submitted that the writ petition is liable to be dismissed.

7. Having considered the submissions made by the learned counsel for both sides. It is noticed that in the impugned order dated 30.03.2021 a show cause notice dated 27.03.2017 was issued to the petitioner to show cause as to why the amount paid as Drawback for the goods exported along with the interest should not be recovered in terms of Rule 16A(2)and (3) r/w Customs, Central Excise Duties and Services Tax Drawback Rules, 1995. Further, personal hearing was given to the petitioner on 15.03.2021 vide Communication bearing Reference F.No.S.Misc.2/417/2016-DBK(BRC) when the second wave of Covid-19 (Omicron) was still looming large.

8. Prima facie, there are indications that the petitioner may have received the export proceeds from the documents filed before this Court. It would require the detailed consideration.

9. Considering the above, the impugned order dated 30.03.2021 is set aside and the case is remitted back to the respondent to pass fresh orders on merits in accordance with law, as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this order.

10. The petitioner shall be heard before passing the order. The impugned order which stands quashed shall be treated as addendum to the show cause notice . The petitioner shall file a reply along with copies of the Negative Statements/BRC, within a period of 30 days from today.

11. The respondent is also directed to facilitate uploading the Negative Statements/BRCs electronically.

12. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

06.09.2024

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

To

1. The Commissioner of Customs (Exports),
Office of the Commissioner of Customs,
Chennai – IV, Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

2.The Deputy Commissioner of Customs (BRC-DBK),
Office of the Commissioner of Customs,
Chennai – IV, Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

3. The Assistant Commissioner of Customs,
Arrears Recovery Cell (Chennai IV),
Office of the Commissioner of Customs-IV,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

C.SARAVANAN, J.

kkd

W.P.No.10254 of 2022

06.09.2024