**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 13.11.2024

CORAM :

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

W.P.No.12367 of 2022

M/s.G.T.India Private Limited,
Represented by its Director Arvind Doshi ... Petitioner

Vs.

The Commissioner of Customs (Exports),
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent to permit amendment of Shipping Bill No.1977648 dated 04.01.2018, from a "Free Shipping Bill" to a "Shipping Bill for Claim for Drawback" in respect of re-export of goods in terms of Section 149 of the Customs Act, 1962 and further direct the office of the respondent to refund the amount of Rs.13,62,098/- (Rupees Thirteen Lakhs Sixty Two Thousand Ninety Eight only) paid in respect of goods re-exported as the same is contrary to Article 265 of the Constitution of India and without authority of law.

For Petitioner : Dr.S.Krishnandh

For Respondent : Mr.Rajnish Pathiyil
Senior Panel Counsel

**ORDER**

This Writ Petition has been filed for a Mandamus, to direct the respondent to permit amendment of Shipping Bill No.1977648 dated 04.01.2018, from a "Free Shipping Bill" to a "Shipping Bill for Claim for Drawback" in respect of re-export of goods in terms of Section 149 of the Customs Act, 1962 and further direct the office of the respondent to refund the amount of Rs.13,62,098/- (Rupees Thirteen Lakhs Sixty Two Thousand Ninety Eight only) paid by the petitioner in respect of goods re-exported as the same is contrary to Article 265 of the Constitution of India and without authority of law.

2. The petitioner had imported goods that is "Black Pepper" vide Bill of Entry No.3042057 dated 30.08.2017. Pursuant to 1st appraisal itself, the petitioner was allowed to pay the customs duty on the imported consignment of "Black Pepper" for a sum of Rs.13,62,098/-. After the goods were assessed and the customs duty was paid, the goods were subjected to lab test under the provisions of the Food Safety and Standards Act, 2006 whether the imported consignment of Black Pepper were fit for human consumption or not.

3. Since the lab report was against the petitioner, the petitioner was not allowed to clear the goods on which, the petitioner had paid duty. Under these

circumstances, an Order was also came to be passed by the Joint Commissioner of Customs (Group-I) in Order-in-Original No.60248 of 2017 on 11.12.2017 wherein it was ordered as follows:-

> i. I order for confiscation of the goods, declared as Black Pepper with an Assessable Value of Rs.99,49,187/- under Section 111(d) of the Customs Act, 1962 read with Food Safety and Standards Act, 2006. However, I give option to the importer to redeem the goods on payment of Redemption Fine of Rs.50,000/- (Rupees Fifty Thousand only) under Section 125 of Customs Act, 1962 for the purpose of re-export only.
> ii. I impose penalty of Rs.25,000/- (Rupees Twenty Five Thousand only) on the importer under Section 112(a) of Customs Act, 1962.
> iii. I order to re-export the imported goods within 3 months from the date of receipt of this order.

4. The petitioner appears to have complied with the above conditions and therefore the petitioner had requested the respondent to convert free shipping bill to drawback shipping bill for claiming draw back under Section 149 of the Customs Act, 1962 to avail the benefit of Rule 4(a) and 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

5. It appears that as against Order-in-Original No.69186 of 2019, the petitioner had also filed an appeal before the Appellate Commissioner, who by an Order dated 31.08.2020 vide Order-in-Appeal Seaport C.Cus.II

No.916/2020, rejected the appeal.

6. Aggrieved by the same, the petitioner had earlier filed a revision before the Principal Commissioner (RA) & Ex.Officio Additional Secretary/Joint Secretary to the Government of India, New Delhi, under Section 129DD of the Customs Act, 1962. This stands recorded by an Order of this Court dated 14.06.2022. The petitioner has not secured the relief under Section 129DD of the Customs Act, 1962 and therefore has prayed for relief in this Writ Petition.

7. Learned Senior Panel Counsel for the respondent defending the stand of the Revenue stating that the petitioner ought to have filed a proper shipping bill under the provisions of Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.

8. It is submitted that since the petitioner had filed a fresh shipping bill, the goods were not examined and therefore it may not be proper to allow the management of the free shipping bill to drawback shipping bill to avail the benefit of duty drawback.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondent.

10. The facts are not in dispute. The imported goods were not allowed to be taken outside the customs area and therefore the question of the imported consignments being re-examined once again before the reexport would have been merely a procedural formality as the Customs Department had already subjected the imported consignments of Black Pepper to test and had sent it for laboratory to comply with the provisions of the Food Safety and Standards Act, 2006.

11. Since the goods have been reexported back, the procedural irregularities in complying with the requirements of the rules under the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, cannot be pressed against the petitioner as the procedures are handmaids of justice and not mistress of law as held by the Hon'ble Supreme Court in **State of Uttar Pradesh** Vs **Aurya Chambers of Commerce,** (1986) Vol 25 ELT 687 & (1986) 3 SCC 50.

12. Since the goods having been exported without being cleared, the

petitioner cannot be denied the substantial benefits that was available to the petitioner.

13. That apart, the petitioner has complied with the conditions of Order-in-Original No.60248 of 2017 dated 11.12.2017.

14. Therefore, this Court is inclined to allow this Writ Petition as prayed for with consequential relief.

15. The respondent is directed to refund the amount within a period of two (2) months from the date of receipt of a copy of this order.

16. This Writ Petition stands allowed with the above observations. No costs.

**13.11.2024**

Index : Yes/No
Internet : Yes/No

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

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To

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

**C.SARAVANAN, J.**

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