IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12101 of 2021
and
W.M.P.No.12874 of 2021

M/s.Srinivasa Exports International,
Rep by its Partner,
Flat No.1-A, Regency Apartments,
No.5, First Lane, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034. ... Petitioner

Vs

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

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 proceedings of the respondent herein made in Order-in-Original No.82272/2021 dated 26.03.2021 and quash the same.

For Petitioner : Mr.S.Thirumavalavan

For Respondent : No Appearance

ORDER

There is no representation on behalf of the respondent.

2. The petitioner is before this Court against the impugned order in Original No.82272/2021 dated 26.03.2021 passed by the respondent, whereby, a demand of Rs.39,53,575/- has been confirmed against 177 shipping bills as mentioned in table to the aforesaid order, on the ground that the petitioner has not produced relevant bank realization certificates for the drawback claimed by the petitioner on the export made by the petitioner between 2006-2007.

3. The learned counsel for the petitioner would submit that the petitioner had received notices from 2010. The learned counsel for the petitioner has drawn attention to notice dated 26.08.2010 which was replied on 27.09.2010, which has been duly acknowledged by the

respondent, wherein, the petitioner has enclosed relevant bank realization certificates. It is submitted that during 2017, once again a fresh notice was issued to the petitioner stating that negative statement for 177 shipping bills on exports made between 2004-2014 were not furnished within stipulated period and hence that the amounts were recoverable from the petitioner. The petitioner has replied on 22.03.2017 and had categorically stated as follows:-

> *"1.We had already submitted the negative statements issued by our banker namely M/s.Corporation Bank, Chennai – 600 014 along with our annexure in originals for the period covering 01.01.2004 to 30.06.2008. The copies of the negative statements issued by the bank and our office (9 seats of half-early statements) along with out covering letter dated 27.09.2010 duly acknowledged by your good office on 01.10.2010 are enclosed herewith for your kind reference.*
>
> *2.As our company was closed, we had not done any export shipment from 01.07.2008 onwards and hence the need for submission of negative list from 01.07.2008 does not arise."*

4. It is submitted that despite the same, the respondent confirmed the demand in respect of 177 shipping bills. A reading of the impugned order indicates that there is no clear discussion to the response of the petitioner. However, the demand has been confirmed.

5. In the Counter affidavit has been filed by the respondent, it has been confirmed that the petitioner was not heard and therefore the respondent was constrained to pass the impugned order in Original No.82272/2021 dated 26.03.2021 under Rule 16(A) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Section 75(1) of the Customs Act, 1962. The petitioner deserves a fresh opportunity of being heard, as the petitioner has change the place of business.

6. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law. It is made clear that the petitioner shall co-operate to the respondent and furnish all the documents in respect of

the exports made under the respective shipping bills for which relief was granted to the petitioner under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. In case, the petitioner fails to furnish the documents, the respondent is at liberty to confirm the demand proposed against the petitioner based on the available materials. The exercise will be excepted to be completed within a period of three months from the date of receipt of a copy of this order.

7. This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

09.08.2024

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

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

C.SARAVANAN, J.

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