IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2024

CORAM :

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.1588 of 2021
and C.M.P.No.9979 of 2021

M/s.Vishnu Clothing Company,
Rep. by its Managing Partner, Mr.S.Babu,
S.F.No.45, Venus Garden, Mangalam Road,
Andipalayam Post, Tirupur 641 687. .. Appellant

-vs-

1. The Commissioner of Customs (Exports),
Custom House, Rajaji Salai,
Chennai-01.

2. The Deputy Commissioner of Customs (BRC-DBK),
Custom House, Rajaji Salai,
Chennai-01. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters patent against the order dated 09.06.2021 passed in W.P.No.12489 of 2021 on the file of this Court.

For the Appellant : Mr.A.Mohamed Ismail

For the Respondents : Mr.K.S.Ramaswamy
Central Govt. Stdg. Counsel

* * * * *

JUDGMENT

(Judgment of the Court was made by R.Suresh Kumar, J.)

This appeal has been filed against the order passed by the Writ Court dated 09.06.2021 made in W.P.No.12489 of 2021.

2. It is the case of the respondent/customs authorities that the appellant has not given proof for realisation of export proceeds, that is, negative certificates for the consignments exported by him with regard to the shipping bills mentioned in the order itself.

3. According to the appellant, in fact, the appellant/exporter had sent a letter dated 26.04.2013 annexing therewith the negative certificates for the years 2010 to 2012 and a letter 31.01.2017

enclosing the negative certificates for the year 2007.

4. Despite these negative certificates having been sent or submitted by the appellant, the respondent/customs authorities, in order to proceed further as per the proposal, issued notice of personal hearing on 01.03.2021, of course, by giving the personal hearing dates on 08.03.2021, 09.03.2021 and 10.03.2021.

5. According to the respondent/customs authorities, on those dates which have been given to the appellant for personal hearing, since the appellant did not appear and also no reply had been given, he had been treated as exparte and accordingly, the proposal had been confirmed by the order-in-original passed by the customs authorities on 27.03.2021.

6. Since no opportunity had been given, according to the appellant, before passing the order-in-original dated 27.03.2021, on the ground of violation of principles of natural justice, challenging the order dated 27.03.2021, the appellant filed a writ petition before the

Writ Court. That was dismissed by the learned Writ Court by the order impugned dated 09.06.2021 on the ground that against the order-in-original passed by the customs authorities, appeal could be filed and without exhausting the statutory appellate remedy, the appellant cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as a matter of course. That was the reason given by the learned Judge rejecting the writ petition through the impugned order.

7. Heard Mr.A.Mohamed Ismail, learned counsel for the appellant and Mr.K.S.Ramaswamy, learned standing counsel for the respondent/customs authorities.

8. We have gone through the order-in-original passed by the authorities on 27.03.2021. In paragraph 9 of the order, it has been stated that the personal hearing notice was given on 01.03.2021 giving 08.03.2021, 09.03.2021 and 10.03.2021 as dates scheduled for personal hearing. However, the appellant/exporter has neither responded to the personal hearing notice dated 01.03.2021 nor

appeared on the said hearing dates. Therefore, the exparte order has been passed.

9. It is to be noted that during the month of March, 2021, it was the second wave of Covid-19 situation. Therefore, during the said period, it cannot be expected, within a span of 3 or 4 days consecutively on 08.03.2021, 09.03.2021 and 10.03.2021, that the representative of the appellant could appear before the customs authorities by way of personal hearing.

10. Moreover, on 08.03.2021, pursuant to the notice dated 01.03.2021, a communication by way of reply also had been given by the appellant stating that negative certificates for the year 2007 submitted vide letter dated 31.01.2017 and the acknowledgement received from the customs authorities dated 02.02.2017 had been annexed and also negative certificates for the year 2010, 2011 and 2012 submitted vide letter of the appellant dated 26.04.2013 and the official acknowledgement of the customs authorities dated 29.04.2013

also had been annexed. Though these documents have already been filed, once again a copy of those documents have been annexed in the letter dated 08.03.2021 of the appellant, which, in fact, was the response to the personal hearing notice dated 01.03.2021.

11. That being the position, on what basis the authorities in the order-in-original had stated that pursuant to personal hearing notice dated 01.03.2021, no appearance had been made on the hearing dates nor any reply had been given for the said notice.

12. When the negative certificates for all these years since had already been given on 31.01.2017 and 26.04.2013 for which acknowledgement also had been produced, it cannot be said that it had not been responded by the appellant.

13. Moreover, during the Covid-19 period when this personal hearing had been given consecutively for 3 dates during March 2021, it cannot be expected that normally people would immediately respond for the personal hearing notice during Covid-19 situation.

14. Therefore, we do not have any hesitation to hold that the order-in-original dated 27.03.2021 is without giving an opportunity of being heard to the appellant. Hence, on that ground, the order dated 27.03.2021 can be successfully challenged before this Court especially before the Writ Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. To that extent, the view taken by the Writ Court is liable to be interfered with.

15. Resultantly, the following order is passed in this writ appeal:

i. The order dated 27.03.2021, that is, the order-in-original, passed by the respondent/customs authorities is set aside;

ii. As a sequel, the matter is remitted back to the respondent/customs authorities for re-hearing, where the respondents are directed to give a personal hearing opportunity to the appellant by giving a specific date for personal hearing;

iii. On receipt of the personal hearing notice, the appellant shall, without fail, appear before the customs authorities, where it is open to the appellant to give any additional defence or reply to the said notice; and

iv. After giving such an opportunity of personal hearing and on completion of the hearing, it is open to the respondent-customs authorities to pass orders by passing a revised order of order-in-original, if they are advised to do so, within a period of two months thereafter.

16. This writ appeal is allowed on the terms indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

(R.S.K., J.) (C.S.N., J.)
04.09.2024

Index : Yes/No
NC : Yes/No

sra

To

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R.SURESH KUMAR, J.
AND
C.SARAVANAN,J.

(sra)

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