



WEB COPY



WP No.27672 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

WP No.27672 of 2024 &
WMP.Nos.30192 & 30193 of 2024

M/s. Peacock Fashions,
represented by its Partner,
Mrs.N.Jagadeeswari
S.F.No.313/2, Pallakattu Thottam,
15-Velampalayam Main Road,
Tiruppur, Tamil Nadu 641 652

...

Petitioner

vs.

1. The Deputy Commissioner of Customs,
Inland Container Depot,
SF.No.129, Poondi Ring Road,
Chettipalayam, Tiruppur,
Tamil Nadu 641 652.
2. The Assistant Commissioner of Customs,
Inland Container Depot,
SF.No.129, Poondi Ring Road,
Chettipalayam,
Tiruppur, Tamil Nadu 641 652.

...

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order-in-original No.59/2023, dated 19.04.2023 in file No.C.No.VIII/48/22/2020 ICD passed by the 1st respondent and quash the same.



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For Petitioner : Mr.T.V.Muthu Abirami
For Respondents : Mrs.Ravathi Manivannan
Senior Standing Counsel

ORDER

This writ petition has been filed for issuance of Writ of Certiorari to call for the records pertaining to the impugned order-in-original No.59/2023, dated 19.04.2023 in file No.C.No.VIII/48/22/2020 ICD passed by the 1st respondent and quash the same.

2. Learned counsel for the petitioner submitted that the petitioner company was engaged in the business of export and manufacturing of garments. The petitioner shifted their office from 171, A1, Nataraja Layout, 1st Street, 15, Velampalayam Post, Tiruppur to 87(2), Ground Floor, Atupalayam Road, Anupparpalayam, Tirupur. Meantime, the respondent issued a show cause notice dated 18.02.2021 to old address, since no reply was filed, the respondents proceeded to issue the impugned order demanding recovery of duty drawback on 19.04.2023. The petitioner came to know about the issuance of such show cause notice and impugned order only after receiving a call from the office of the respondents on 04.04.2024.



3. She further submitted that since the respondent had sent show cause notice and personal hearing notices to their old address, the same were returned with the remarks addressee 'left'. The petitioner was not aware of the proceedings initiated by the respondent for recovery of duty drawback, hence, the petitioner had no occasion to file reply to the show cause notice and participate in the proceedings. Therefore, the impugned order was passed without giving an opportunity of personal hearing to the petitioner and the same is violation of principles of natural justice. She further submitted that the entire amount of Rs.1,20,213/- towards sanctioning of ineligible drawback has already been recovered by the department. Thus, she prayed for setting aside the impugned order passed by the 1st respondent.

4. Per contra, the learned Senior Standing Counsel appearing for the respondents would submit that the petitioner has provided more than one address and the show cause notice was issued only to the address provided by them. The department had issued notice as per the informations available with the respondent, hence, the fault is only on the part of the petitioner side and not on the part of the respondent side. Thus she prayed for dismissal of this writ petition.



5. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel appearing for the respondent and perused the materials available on record.

6. Admittedly, the present impugned order under challenge is an exparte order. The impugned order was passed without affording the opportunity of personal hearing. It is contended by the petitioner that the show cause notice dated 18.02.2021 and personal hearing notices were served on the petitioner to their old address and the same were returned unserved, therefore, the petitioner had no occasion to file their reply and participate in the proceedings. It is to be noted that when the department is unable to communicate notices to petitioner, atleast it ought to have taken steps to re-communicate the notices to the another address furnished by them. But without doing so, the respondents have passed the impugned order demanding recovery of duty drawback. In view of the above, this Court is of the view that the impugned order is passed in violation of principles of natural justice. Such an order is liable to be set aside. Further, in the present case, ineligible drawback amount has already been recovered by the department, therefore no prejudice would be caused to the respondents, in the event, the matter is set aside. In such a view of the



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matter, this court is inclined to set aside the impugned order and remit the matter back to the authorities for fresh consideration.

7. Accordingly, this Court passes the following order:

1. The impugned order is set aside. The matter is remitted back to the authorities for fresh consideration.
2. The petitioner is directed to file its reply to the show cause notice dated 18.02.2021 within a period of three weeks from the date of receipt of a copy of this order and on filing such reply, the respondent is directed to afford an opportunity of personal hearing to the petitioner by providing 14 days time and thereafter, proceed with the matter on merits and in accordance with law.

8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

23.09.2024

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
msr



WP No.27672 of 2021

To

1. The Deputy Commissioner of Customs,
Inland Container Depot,
SF.No.129, Poondi Ring Road,
Chettipalayam, Tiruppur,
Tamil Nadu 641 652.
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KRISHNAN RAMASAMY, J.

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