



W.P.No.23909 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 21.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.23909 of 2023
and W.M.P.No.23425 of 2023

M/s.Alaska Export,
rep. by its Partner,
Mr.K.S.Mahesh Kumar,
Factory Jade House, S.F.No.566-2,
Rengasamy Nagar East, Andankoil,
East Erode Road, Karur-639008.

... Petitioner

-VS-

The Assistant Commissioner of Customs(BRC-DBK),
Export Commissionerate,
Custom House no.60, Rajaji Salai,
Chennai-600 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in-original no.101340/2023 dated 27.02.2023 passed by the respondent and quash the same.



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WEB COPY For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.B.Aravind Srevatsa, Jr.standing counsel

ORDER

The petitioner challenges the order dated 27.02.2023, by which the recovery of availed drawback of Rs.6,23,923/- was confirmed.

2.The petitioner is engaged in the business of export of textiles. In the course of business, the petitioner had filed 33 shipping bills relating to the export of goods described as "cotton power-loom made up articles". Such exports were effected between 2011-2013. In respect thereof, the petitioner had claimed duty drawback in terms of Section 75 of the Customs Act, 1962. As a condition for availing duty drawback, the petitioner was required to ensure realization of sale proceeds within a stipulated period. According to the petitioner, by letter dated 06.04.2013, the petitioner had submitted negative



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statements certified by the authorised dealer bank in respect of realization of export proceeds between 2010-12. As regards the period subsequent thereto, it is stated that the Bank Realization Certificates (BRCs) are available.

3.On account of the original office of the petitioner being shifted from No.203, Ezhil Nagar, Kovai Road, Karur to Factory Jade House, SF No.566-2, Rengasamy Nagar East, Andankoil, East Erode Road, Karur -639 008, it is stated that the petitioner did not receive the show cause notice dated 19.05.2017 and, therefore, neither replied thereto nor participated in proceedings culminating in the impugned order.

4.By referring to the communication dated 06.04.2013 and the annexure thereto, and the BRCs at pages 38 to 81 of the typed set of papers, learned counsel for the petitioner submits that the export proceeds were duly realized. He further submits that the petitioner



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was unable to participate in the proceedings on account of the change of address and that the import and export code was also modified to reflect the new address.

5.These contentions are countered by Mr.B.Arvind Srevatsa, learned junior standing counsel for the respondent. At the outset, he submits that the impugned order could have been appealed against and that the petitioner was not justified in invoking the jurisdiction of this Court. He further submits that the impugned order was issued on 27.02.2023 and received by the petitioner on 03.03.2023. Because the writ petition was filed belatedly in August 2023, learned counsel contends that the petitioner is not entitled to discretionary relief on account of laches.

6.The documents on record include the communication dated 06.04.2013 and the annexure thereto. Also on record are several BRCs, which appear to correspond to the 33 shipping bills, which



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form the subject matter of the impugned order. Thus, there is *prima facie* evidence that the export proceeds were realized. In order to provide an opportunity to the petitioner to place these documents before the respondent for consideration, interference with the impugned order is warranted.

7. Therefore, the impugned order is quashed and the matter is remanded for re-consideration. The petitioner is permitted to place all the relevant documents relating to realization of export proceeds before the respondent within a maximum period of 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity, including personal hearing, to the petitioner and, thereafter, issue fresh orders within two months.

8. W.P.No.23909 of 2023 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.23425 of 2023 is closed.

21.02.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

The Assistant Commissioner of Customs(BRC-DBK),
Export Commissionerate,
Custom House no.60, Rajaji Salai,
Chennai-600 001.



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SENTHILKUMAR RAMAMOORTHY,J

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