IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.34527 of 2023
and
W.M.P.No.34442 of 2023

M/s.Nadi Airtechnics Private Limited,
Represented by its C.F.O.Sh.M.S.Ramakrishnan,
No.57-58 Ground Floor, Thuttankulam Road,
Madhavaram, Chennai-600 060. ... Petitioner

-Vs-

1.The Commissioner of Customs,
Office of the Commissioner of Customs, Chennai-IV,
No.60, Rajaji Salai, Customs House,
Chennai-600 001.

2.The Deputy Commissioner of Customs,
Office of the Deputy Commissioner (DBK-BRC),
No.60, Rajaji Salai, Customs House, Chennai-IV,
Chennai-600 001.

3.The Assistant Commissioner of Customs,
(Arrear Recovery Cell)
No.60, Rajaji Salai, Customs House, Chennai-IV,
Chennai-600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent No.2 in his proceeding F.No.S.Mis.2/1680/2016-BRC (DBK) CH-IV dated 31.05.2022 and quash the same and thereby direct the respondent Nos.2 & 3 to release the imported goods of the petitioner (IEC0491015232) without insisting on demurrages or any other payments except the e payment made under the challan No.2046709333 under the document No.883691.

For Petitioner : Mr.K.Chandrasekar

For Respondents : Mr.Sai Srujan Tayi, Sr. Standing Counsel

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ORDER

The petitioner assails an order issued in May 2022 by the second respondent herein.

2. The petitioner is an exporter of goods and had availed of duty drawback incentive in relation to exports made in the years 2006 & 2007. In relation thereto, the petitioner received a notice dated 31.08.2010, calling for evidence of realization of export proceeds. In response, by reply dated

24.11.2010, the petitioner enclosed the bank realization certificates (BRCs) from the Bank of Baroda in respect of the relevant shipping bills. Thereafter, a show cause notice was issued on 30.06.2017 calling upon the petitioner to show cause as to why a sum of Rs.5,41,027/- paid to the petitioner as duty drawback should not be recovered. In response to the show cause notice, the petitioner enclosed certificates from an independent Chartered Accountant to the effect that there is no pending realization against the relevant shipping bills. In spite of the submission of these documents and the subsequent reply dated 14.06.2022, the petitioner states that the impugned order came to be issued.

3. By inviting my attention to the impugned order, learned counsel for the petitioner submits that the impugned order does not refer to the replies submitted by the petitioner or deal with the documents submitted to substantiate the realization of export proceeds. Therefore, it is submitted that the impugned order and orders consequential thereto should be quashed.

4. In response to this contention, Mr.Sai Srujan Tayi, learned Senior

Standing Counsel for the respondents, submits that the impugned order was issued because the petitioner failed to appear in spite of receiving a personal hearing notice. Therefore, he submits that the impugned order does not call for interference.

5. The petitioner has placed on record the reply dated 24.11.2010 to the letter dated 31.08.2010. The letter indicates that all relevant original BRCs were enclosed. A subsequent letter dated 15.09.2017 and the certificates issued by M/s.Kumbhat & Co., Charted Accountant, are also on record. Another letter dated 14.06.2022 refers to the submission of BRCs previously. None of these documents appear to have been taken into consideration in the order in original. As a result, the petitioner was not provided a reasonable opportunity to establish that the export proceeds were duly realised.

6. For reasons stated above, the impugned order dated 31.05.2022 is quashed and the matter is remanded for reconsideration. After providing a reasonable opportunity to the petitioner, the second respondent is directed to dispose of the matter by a reasoned order within a period of four weeks from the date of receipt of a copy of this order. Since consignments related to the petitioner were not released as a consequence of the order impugned herein, the respondents are directed not to withhold such consignments on the basis of the order impugned. In case the petitioner is held to be ineligible for the duty drawback availed of by it, it will be open to the respondents to take consequential action in accordance with law in respect of subsequent consignments.

7. This Writ Petition is disposed of, on the above terms. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

18.01.2024

rpl
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

1.The Commissioner of Customs,
Office of the Commissioner of Customs, Chennai-IV,
No.60, Rajaji Salai, Customs House,
Chennai-600 001.

SENTHILKUMAR RAMAMOORTHY,J.

rpl

2.The Deputy Commissioner of Customs,
Office of the Deputy Commissioner (DBK-BRC),
No.60, Rajaji Salai, Customs House, Chennai-IV,
Chennai-600 001.

3.The Assistant Commissioner of Customs,
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