



W.P(MD)No.5973 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.5973 of 2024
WMP(MD) Nos.5629 & 5630 of 2024

M/s. Sri Balaji Exports,
Rep by its Proprietor
Mr.M.P.Sanjay Babu,
No.1/10, 1st Street,
Maruthachalapuram,
Kumaranandapuram North,
Tiruppur – 641 602.

... Petitioner

Vs

- 1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004.
- 2.The Assistant Commissioner of Customs (BRC),
Custom House,
New Harbour Estate,
Tuticorin-628 004.
- 3.The Assistant Commissioner of Customs,
(Arrears Recovery Cell),
Custom House,
New Harbour Estate,
Tuticorin-628 004.



W.P(MD)No.5973 of 2024

WEB COPY

4.The Chief Manager,
Canara Bank,
Kalluvazhy,
Ottappalam-Mannarkkad Road,
Palakkad District,
Kerala.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Order-in-Original No.1033/2020 in C.No.VIII/20/1284/2018-BRC, DIN.20200981OH00001FF144, dated 22.09.2020, passed by the 2nd respondent and to quash the same as illegal, arbitrary, unfair, unreasonable and in clear violation of principles of nature justice and further direct the 2nd Respondent herein to rehear and dispose off the same on merits after affording an opportunity of Personal hearing and accepting the Statement of Bank Realization / BRC already furnished by the petitioner herein for the impugned 7 Shipping Bill Numbers and dated (1) 1004226/12.02.2014, (2) 1687698/20.03.2014, (3) 1782553/25.03.2014 (4) 1784932/25.03.2014, (5) 9288131/02.01.2014 (6)9289739/02.01.2014 and (7) 9899376/06.02.2014 and pass such further orders.

For Petitioner	: Mr.A.K.Jayaraj
For R1 to R3	: Mr.R.Nandhakumar
	Standing Counsel



W.P(MD)No.5973 of 2024

ORDER

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The case of the petitioner is that he was doing export business in the year 2014 and subsequently closed down his business and gone to his native. During the year 2014, he has availed the benefit of duty draw back scheme for the export made by him and he has realized the sale proceeds. However, the Assistant Commissioner of Customs/the second respondent has passed an order, dated 22.09.2020, directing the petitioner to pay the duty draw back amount along with interest without considering that the petitioner has received Bank Realization Certificate in the year 2014 itself. According to the petitioner, the proceedings has been initiated as against this petitioner without providing an opportunity of hearing to him. Therefore, the petitioner is before this Court.

2.Mr.R.Nandhakumar, learned Standing Counsel takes notice for the respondents and submits that a show cause notice was issued to this petitioner and personal hearing opportunity was also provided. However, the petitioner has not availed the same. The



W.P(MD)No.5973 of 2024

WEB COPY

petitioner has not intimated the change of address to the Department and therefore, he cannot blame the Department that he has not been provided with opportunity.

3.In reply, the learned counsel appearing for the petitioner submits that it is the mistake on the part of the petitioner in not intimating the change of address. The petitioner is having necessary documents to substantiate his case and he is ready to produce the same before the authorities. The learned counsel has relied on the order passed by the Principal Seat of this Court in W.P.No.2088 of 2024, dated 07.02.2024 to substantiate his case.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The order passed by the Assistant Commissioner of Customs/the second respondent, dated 22.09.2020, directing the petitioner to pay the duty draw back amount is under challenge in



W.P(MD)No.5973 of 2024

this writ petition. The petitioner claims that he is having Bank Realization Certificate issued in the year 2014 and he is ready to produce the same before the authorities. The respondent claims that after providing sufficient opportunity to the petitioner, the impugned order came to be passed. In order to provide one more opportunity to the petitioner, the order impugned in this writ petition is hereby set aside. This writ petition is allowed. **The petitioner is directed to appear before the second respondent on 04.04.2024 along with the required Bank Realization Certificate.** The respondent shall consider the same and take a decision afresh. No costs. Consequently, connected Miscellaneous petitions are closed.

21.03.2024

NCC: Yes/No

Index: Yes

Internet: Yes

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Note: Issue order copy on 26.03.2024.



W.P(MD)No.5973 of 2024

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B.PUGALENDHI, J.

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