BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.8503 of 2024
and
W.M.P.(MD) Nos.7715 and 7716 of 2024

Excess Trade Overseas,
rep. By its Proprietor,
D.Dharmender,
No.105, Mahesh Nagar,
Alpine Electonics,
Green Park,
Ambala, Haryana. ... Petitioner

/vs./

1.The Commissioner of Customs,
O/o. the Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin,
Tuticorin District.

2.The Additional Commissioner of Customs,
O/o. the Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin,
Tuticorin District.

3.The Appraiser of the Customs,
Special Intelligence & Investigation Branch (SIIB),
Customs House,
Tuticorin,
Tuticorin District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned detention notice issued by the 3rd Respondent in his proceedings in C.No.VIII / 48/25/2024 - SIIB dated 06.02.2024 and quash the same as illegal and consequentially to direct the Respondents to release and permit the petitioner to Export the Goods detained by the 3rd Respondent in Container No. CMAU0797814 in Receipt No. ATTPL / 000183 / 20240206 dated 06.02.2024 for shipment to PINNSOFT KENYA LTD, NAIROBI, KENYA and further direct the respondents to waive the demurrage and detention charges of the subject goods for the illegal detention within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan Senior Counsel for
M/S.Ajmal Associates

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to call for the records relating to the impugned detention notice issued by the 3rd respondent bearing Ref.C.No.VIII/48/25/2024 - SIIB dated 06.02.2024, to quash the same as illegal and to direct the respondents to release and permit the petitioner to export the goods detained by the third respondent in Container No. CMAU0797814 in Receipt No. ATTPL / 000183 / 20240206 dated 06.02.2024 for shipment to Pinnsoft Kenya Ltd., Nairobi, Kenya and to direct the respondents to waive the demurrage and detention charges of the subject goods for the illegal detention.

2.The petitioner appears to have sourced cigarettes from a supplier viz., Sunrise India for export to a buyer from Dubai for being supplied in Kenya. The purchase order placed on the petitioner are dated 20.12.2023 and 21.12.2023. The petitioner has raised invoice on the foreign buyer on 26.12.2023 following three invoices:-

26.12.2023	Invoice raised by the petitioner for the sale of 130 cases containing 13,00,000 cigarette sticks
26.12.2023	Invoice raised by the petitioner for the sale of 155 cases containing 13,50,000 cigarette sticks
26.12.2023	Invoice raised by the petitioner for the sale of 140 cases containing 14,00,000 cigarette sticks

3.The supplier has raised invoice on the petitioner all dated 28.12.2023 as detailed below:

28.12.2023	Tax Invoice No.14 issued by Sunrise India to the writ petitioner claiming IGST Rs.20,05,668/-
28.12.2023	Tax Invoice No.15 issued by Sunrise India to the writ petitioner claiming IGST Rs.19,86,566/-
28.12.2023	Tax Invoice No.16 issued by Sunrise India to the writ petitioner claiming IGST Rs.18,14,652/-
28.12.2023	Tax Invoice No.17 issued by Sunrise India to the writ petitioner claiming IGST Rs.18,91,058/-

4.The case of the petitioner is that the exports are duty free and therefore there is no justification effecting seizure or detaining the export. That apart, it is submitted that the supplier has paid IGST on the purchase made by the petitioner and therefore there is no case made out for detaining the export consignment.

5.Learned counsel for the respondent on the other hand would submit that the GST registration of the supplier viz., Sunrise, India who has supplied the consignment to the petitioner vide invoices dated 28.12.2023, registration has been cancelled on 11.08.2023 as such question of payment of IGST on the strength of a cancelled registration was impossible. That apart learned counsel for the respondent would submit that the Customs Department has serious doubt regarding the supply chain of the cigarette which are proposed to be exported to Kenya at the behest of the foreign buyer from Dubai who has raised invoices on the petitioner who has issued purchase order dated 20.12.2023 and 21.12.2023 on the petitioner. That apart, it is submitted that petitioner has been issued with summons and the summons have not been answered till date.

6.Learned counsel for the respondent also draw attention to the email dated 25.03.2024, wherein the customs department has called upon the petitioner to furnish the relevant import documents,, Bill of entry, Commercial Invoice, Bill of Lading etc., and in the case that the cigarettes were made in India to furnish manufacturing details viz., Name of Manufacturer, ate of Manufacturing etc., to which the petitioner has replied on the following day on 26.03.2024 as follows:

> *" We have request to the supplier to furnish all the details and documents of this consignment purchase bill no. 14,15,16,17."*

7.It is therefore submitted that without furnishing the details, the petitioner has rushed to this court. It is further submitted that the seizure has been affected on 26.03.2024, under section 110 of the Customs Act, 1962, and therefore, Writ Petition is liable to be dismissed as premature.

8.It is submitted that the respondent should be given a free hand to investigate and in the absence of proper cooperation by the petitioner, the Writ Petition should be dismissed so that the Customs Department can proceed against the petitioner in accordance with law under the provisions of Customs Act, 1962.

9.It is noticed that after the filing of the present writ petition, the respondents have issued a seizure memo of the Cigarettes, which were proposed to be exported by the petitioner on 26.03.2024. The seizure memo appears to have been served on the petitioner on 02.09.2024.

10.The petitioner in return has filed an application under Section 110(A) of the Customs Act, 1962, for provisional release of the export cargo of Cigarettes, which have got stuck on account of the objections raised by the respondents. The application under Section 110A of the Customs Act, 1962, in response to the seizure memo dated 26.03.2024 has been filed before the first respondent on

09.04.2024, which is acknowledged on 12.04.2024.

11.Considering the fact that there are disputed questions of fact and the case may involve other issues, which cannot be decided at this stage in this writ petition, this Court is inclined to dispose of this writ petition by directing the first respondent to dispose of the application dated 09.04.2024 received on 12.04.2024 as expeditiously as possible, preferably within a period of two weeks from the date of receipt of a copy of this order. The petitioner shall cooperate with the first respondent by responding to all the notices, which have been issued so far to the petitioner, which has culminated in the issuance of seizure memo dated 26.03.2024.

12.With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No **15.04.2024**
Internet : Yes / No

C.SARAVANAN, J.

mm/kpr

W.P.(MD) No.8503 of 2024

15.04.2024