IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Petition Nos.7828 to 7831 of 2009

M/s.Aleed Construction Equipment & Spares,
represented by its Proprietor,
18, Pasumarthy Street, 2nd Lane,
United India Colony, 3rd Main Road,
Kodambakkam, Chennai – 600 024.
.. Petitioner in the above W.Ps

vs

1.Union of India,
represented by its Secretary,
Department of Revenue,
Ministry of Finance,
Govt. of India, New Delhi.

2.The Central Board of Excise and Customs,
represented by its Chairman,
North Block, New Delhi – 110 011.

3.The Chief Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

4.Assistant Commissioner of Customs (Drawback),
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.
.. Respondents in the above W.Ps

Common Prayer : PETITIONs filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring the Notification No.23/2008-Customs dt.1.3.2008 issued by the 1st Respondent herein Making further Amendments in the Principal Notification No.19/1965-Customs, dt.6.2.65 as not being in conformity with the provisions of the Customs Act, 1962 and ultra vires the powers granted to the Central Government under Sec.74(2) of the Customs Act, 1962 and quashing the same and consequently direct the fourth respondent to sanction the drawbacks claimed by the petitioner herein rejected by order dated 9.1.09 in order in original Nos.8412 to 8415 of 2009.

In all W.Ps.

For Petitioner	:	Mr.S.Murugappan
For Respondents	:	Mr.K.Mohanamurali Senior Panel Counsel

COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

Heard Mr.S.Murugappan, learned counsel for the petitioner and Mr.Mohanamurali, learned Senior Panel Counsel for the respondents.

2. The challenge in these Writ Petitions is to Notification No.23/2008-Customs dated 01.03.2008. Learned counsel for the petitioner points out that the period between the date of clearance for home consumption and the date when goods were placed under customs

control for export, is only 18 months in the maximum, under the aforesaid Notification. According to him, this is contrary to the statutory stipulation under Section 74(1)(iii)(b) of the Customs Act, 1962 (in short 'Act'), which says that the duty drawback is eligible on re-export of duty paid goods, if the goods are entered for export within 2 years from the date of payment of duty on the importation thereof.

3. While prima facie there may be some merit in the legal issue canvassed as to whether by way of Notification, the statutory benefit can be either truncated or reduced, this is not a proper case to consider that question. This is for the reason that admittedly the four consignments which are in issue have been given to customs control for re-export only beyond a period of 2 years, ie.., between 32 and 34 months. Hence, the challenge to Notification No.23/2008 dated 01.03.2008 becomes academic. With this, the challenge in these Writ Petitions is liable to be rejected and we do so, while pressing the legal issue for decision in another appropriate case.

4. At this juncture, Mr.Murugappan would draw our attention to the fact that the petitioner is aggrieved by Orders-in-original passed by the 4th respondent, i.e., Assistant Commissioner of Customs (Drawback), all dated 09.01.2009, where the officer has applied the impugned

Notification to reject the refund claim for duty drawback.

5. A perusal of the prayer in the Writ Petitions however reveals only the prayer of a Writ of Declaration challenging Notification No.23/2008 – Customs dated 01.03.2008. Towards the conclusion of the prayer a direction is sought to the 4th respondent to sanction duty drawback which was rejected by orders-in-original, all dated 09.01.2009. In the absence of any prayer addressing the orders-in-original per se and seeking quash of the same, we are not inclined to extend the scope of the Writ Petitions before us.

6. To be noted that orders dated 09.01.2009 are appealable orders and Mr.Murugappan would agree that the same will be challenged by way of statutory appeals before the Commissioner of Customs (Appeals).

7. Hence, such appeals, if and when filed, within a period of four (4) weeks from date of uploading of this order on the official website of this Court, shall be taken on file by the Commissioner of Customs (Appeals) without reference to limitation but ensuring compliance with all other conditions, including pre-deposit.

8. This is also the proper course of action for the reason that Mr.Murugappan relies on orders passed by the Chief Commissioner of Customs dated 10.06.2008 and 20.06.2008 extending the period for

refund of duty drawback in the case of the writ petition in line with the proviso to Section 74(1)(iii) of the Act.

9. There is nothing in orders dated 09.01.2009 to indicate that those orders have been produced before the original authority. Hence, if at all such orders have been passed, the same may be produced before the appellate authority, who shall take note of the same while disposing the appeals, if and when filed, in accordance with law and after affording an opportunity of personal hearing to the petitioner.

10. Seeing as the transactions are of the year 2008, the appeals, if and when filed validly, shall be disposed within a period of eight (8) weeks from date of institution of the same.

11. These Writ Petitions are dismissed with liberty. No costs.

[A.S.M.,J] [R.K.M.,J]
25.03.2025

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Index:Yes
Speaking order
Neutral Citation:Yes

DR. ANITA SUMANTH,J.
and
R.KALAIMATHI.,J

sl

To

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