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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2025

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.6707 of 2024 and W.M.P. No.7464 of 2024

M/s.Royale Marine Impex Pvt. Ltd.,
rep. by its Director G.Surendra Raju .. Petitioner

vs

The Assistant Commissioner of Customs
(EDI-Drawback),
Customs House, No.60, Rajaji Salai,
Chennai - 600 001. .. Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 06.12.2023 passed by the respondent in F.No.CUS/DBK/SC/OTH/98/2023-DBK and quash the same and further direct the respondent to sanction the drawback claims filed in respect of the Shipping Bills bearing Nos.4578261 dated 08.12.2015, 3554406, dated 14.10.2015, 3613576, dated 17.10.2015, 3866876 dated 31.10.2015 and 4993062 dated 30.12.2015 along with applicable interest.

For Petitioner : Mr.Sethu Prabakaran R.

For Respondent : Mr.S.R.Sundar,
Standing Counsel

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ORDER

The petitioner claims that they are statutorily entitled for duty drawback and the shipping bills filed by them in this regard have to be treated as a claim for duty drawback. The petitioner has filed five drawback claims in respect of five shipping bills bearing Nos.4578261, 3554406, 3613576, 3866876 and 4993062 dated 08.12.2015, 14.10.2015, 17.10.2015, 31.10.2015 and 30.12.2015 respectively for the claim of Rs.2,70,256/-, Rs.2,39,429/-, Rs.2,32,949/-, Rs.1,15,955/- and Rs.2,70,085/- respectively. According to the petitioner, arbitrarily, the duty drawback claim in respect of the five shipping bills, referred to supra, was zeroed on 11.06.2018 and 12.6.2018. According to the petitioner, the respondent has unilaterally proceeded to reject the drawback claims made by the petitioner. According to the petitioner, no speaking order was passed informing the reasons for rejecting the drawback claims.

2.Learned counsel for the petitioner drew the attention of this Court to the Customs Central Excise Duty and Service Tax Drawback Rules, 1995 and in particular, referred to Rule 13(3)(a) and would submit that it is the responsibility of the respondent that in case the claim for drawback made by

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the exporter is incomplete in any material particulars or is without the documents specified in sub-rule 2, the same shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of Section 75A of the Customs Act. Learned counsel for the petitioner would submit that the mandatory procedure, referred to supra, has not been followed by the respondent as they did not return the drawback claim made by the petitioner along with the deficiency memo as prescribed in the rule.

3.Learned counsel for the petitioner drew the attention of this Court to the impugned order dated 06.12.2023 passed by the respondent and would submit that the rule, which makes it mandatory on the part of the respondent to produce deficiency memo along with the return of the duty drawback claim made by the petitioner, has not been considered and it is also an admitted fact that the deficiency memo, as prescribed under the Customs Central Excise Duty and Service Tax Drawback Rules, 1995, was not furnished to the petitioner, while returning the duty drawback claim

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made by the petitioner. Therefore, he would submit that the impugned order has to be quashed.

4.On the other hand, the learned Standing Counsel appearing for the respondent would submit that after the implementation of the Indian Customs EDI Systems (hereinafter referred to as 'ICES') module, the filing of shipping bills in physical copy was discontinued and Indian Customs Electronic Data Interchange Gateway (hereinafter referred to as 'ICEGATE' is being used, which is the national portal of Indian Customs of Central Board of Indirect Taxes and Customs (hereinafter referred to as 'CBIC') that provides e-filing services to the trade, cargo carriers, and other trading partners electronically. Therefore, according to him, the queries raised by the respondent, pertaining to the five shipping bills, for which, the petitioner had claimed duty drawback, were directly raised in ICES itself and the same were available for a long time to enable the petitioner to reply through ICEGATE. Therefore, he would submit that being aware of the queries raised by the respondent on the petitioner with regard to the petitioner's duty drawback claim, the petitioner cannot now rely upon the rule, which prescribes that deficiency memo will have to be furnished to the petitioner

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for the five shipping bills submitted by the petitioner for which duty drawback claim has been made. Learned Standing Counsel for the respondent also submits that the petitioner is also aware of the Public Notice 17/18 dated 09.03.2018, which has zeroed the duty drawback claim of the petitioner in ICES. He would also submit that the petitioner failed to appear for personal hearing or replied to the queries within the stipulated time period as specified in the Public Notice 17/18 dated 09.03.2018. He would submit that the petitioner, being aware of the Public Notice, cannot now claim that they have not been informed of the deficiency memo in the five shipping bills for which duty drawback claim has been made by the petitioner. He would submit that the impugned order has been passed only in accordance with law and therefore, it has to be confirmed by this Court.

5.As on the date of submission of the five shipping bills by the petitioner, it is an admitted fact that the Customs Central Excise Duty and Service Tax Drawback Rules 1995, more particularly, Rule 13(3)(a), which the petitioner relies upon, was in force. Only thereafter, the implementation of the Indian Customs, EDI Systems, module for filing of shipping bills in physical copy was discontinued and presently, Indian Customs Electronic

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Data Interchange Gateway (herein after referred to as 'ICEGATE') is being used, which is the national portal of Indian Customs of Central Board of Indirect Taxes and Customs. Rule 13(3)(a) of the Customs Central Excise Duty and Service Tax Drawback Rules 1995 is extracted hereunder:

> *'If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), it shall be returned to the claimant with a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days and shall be deemed not to have been filed for the purpose of Section 75-A.'*

6.As seen from Rule 13(3)(a) referred to supra, it is clear that while returning the duty drawback claim, a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days shall be given to the petitioner. Admittedly, in the case on hand, the deficiency memo contemplated in Rule 13(3)(a) has not been given to the petitioner.

7.Learned Standing Counsel for the respondent would submit that the Central Government is having the power to relax any of the rules prescribed under the Customs Central Excise Duty and Service Tax Drawback Rules 1995 and only by exercising the said power, the respondent issued a Public

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Notice 17/18 dated 09.03.2018 zeroing the duty drawback claim made by the petitioner in ICES.

8.The petitioner has categorically stated that they are not aware of the Public Notice. In the impugned order, the respondent has also not considered Rule 13(3)(a) of the Customs Central Excise Duties and Service Tax Drawback Rules 1995, which makes it clear that while returning the duty drawback claim, the respondent will have to furnish the deficiency memo in the form prescribed by the Commissioner of Customs. Admittedly, the Public Notice relied upon by the learned Standing Counsel for the respondent was issued only in the year 2018, though the duty drawback claim made by the petitioner for the five shipping bills pertains to the year 2015. Therefore, the submission made by the learned Standing Counsel for the respondent, who has relied upon the Public Notice, referred to supra, has to be rejected.

9.According to the respondent, queries were raised by the respondent on 22.12.2015, 20.04.2016, 03.01.2016, 02.01.2016, 18.01.2016 and 28.03.2016 and the petitioner did not reply to most of the queries.

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Therefore, he would submit that sufficient opportunities were granted to the petitioner by the respondent before passing the impugned order, but, despite the same, the petitioner has failed to make use of those opportunities. Therefore, the learned Standing Counsel would submit that the question of interfering with the impugned order by this Court does not arise.

10.Admittedly, in the impugned order, the respondent has not considered Rule 13(3)(a) of the Customs Central Excise Duty and Service Tax Drawback Rules, 1995 which were applicable on the date when the petitioner had made a duty drawback claim in respect of five shipping bills submitted by them. Rule 13(3)(a) of the Customs Central Excise Duty and Service Tax Drawback Rules, 1995 also makes it clear that while returning the duty drawback claim, the respondent will have to issue a deficiency memo in the form prescribed by the Commissioner of Customs within 10 days.

11.In the case on hand, admittedly, no such deficiency memo, as prescribed under the aforesaid rule, was furnished to the petitioner by the respondent while returning the duty drawback claim made by the petitioner.

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The Public Notice 17/2018 dated 09.03.2018, relied upon by the learned Standing Counsel for the respondent was made by the respondent only in the year 2018, though the duty drawback claim made by the petitioner for the five shipping bills pertains to the year 2015. The learned Standing Counsel for the respondent would submit that sufficient opportunities were granted to the petitioner to answer the queries raised by the respondent, despite the same, the petitioner failed to make use of those opportunities. However, as seen from the impugned order, the queries raised by the respondent are not reflected in the impugned order. The respondent has also not considered Rule 13(3)(a) of the Customs Central Excise Duty and Service Tax Drawback Rules 1995, which has been relied upon by the petitioner before this Court. The Public Notice issued by the Central Government in the year 2018, relied upon by the learned Standing Counsel for the respondent, has also not been considered by the respondent in the impugned order. Being a non-speaking order with regard to the contentions of the petitioner as raised in this writ petition as well as the the contentions raised by the learned Standing Counsel for the respondent, necessarily, the impugned order has to be quashed and the matter has to be remanded back to the respondent for fresh consideration, on merits and in accordance with

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law, after giving due consideration to the contentions of the petitioner as well as the respondent as raised in the counter before this Court.

12.This Court is not expressing any opinion on the merits of the matter. It is for the respondent to consider the same, on merits and in accordance with law, after affording three personal hearings to the petitioner.

13.For the foregoing reasons, the impugned order dated 06.12.2023 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration, on merits and in accordance with law. The respondent, while passing the final order, shall consider all the contentions raised by the petitioner as well as the respondent including the contentions raised in the counter filed by the respondent before this Court and shall pass final orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording three personal hearings to the petitioner. With the above directions, this writ petition is disposed of.

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To

The Assistant Commissioner of Customs
(EDI-Drawback),
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