IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 07.03.2025

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

W.P.No.18552 of 2022

M/s.L&T Construction Equipment Ltd.,
Rep. By its Head-Hydraulics
Mr.Shailesh Kodkani,
Bangalore. .. Petitioner

Vs

The Assistant Commissioner of Customs (Chennai-IV),
No.60, Rajaji Salai,
Customs House, Chennai – 1. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorari to call for the records of the order passed by the respondent in Order-in-Original No.89028/2022-DBK-BRC, dated 27.05.2022 passed from File No.S.MISC.2/2291/2016-BRC(DBK) and quash the same.

For Petitioner : Mr.S.Murugappan

For Respondent : Mr.B.Arvind Srevatsa

ORDER

This writ petition has been filed challenging the impugned order-in-original dated 27.05.2022 passed under Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as amended upto 13th July, 2006. Under the impugned order, the petitioner has been directed to pay the duty drawback benefit they had received in respect of their exports.

2. The petitioner has challenged the impugned order on the following grounds:-

(a) The impugned order has been passed in violation of the principles of natural justice.

(b) Despite sending replies dated 28.08.2017 and 13.04.2022 to the show cause notice dated 16.08.2017, the respondent has failed to consider the request of the petitioner. In those replies, a specific request was made by the petitioner seeking for extension of time to submit a detailed reply in view of the fact that the exports were very old.

(c) The shipments made by the petitioner pertain to the years 2004-2005, but, the show cause notice was issued seeking for recovery of duty drawback only on 16.08.2017 after a lapse of more than 12 years.

Therefore, on the ground of inordinate delay in issuing the show cause notice, the impugned order has to be quashed.

3. In support of his contention, the learned counsel for the petitioner drew the attention of this Court to the following authorities:-

(a) A decision of the Hon'ble Supreme Court in the case of ***Government of India Vs. Citedal Fine Pharmaceuticals [1989 (42) ELT 515 (SC)]*** for the proposition that any demand from any statutory authority will have to be made within a reasonable period.

(b) A decision of the Gujarat High Court in the case of ***Pratibha Sytex Ltd Vs. Union of India [2013 (287) ELT 290 (Guj.)],*** whereby it is held that 3 years' period is the maximum period, which can be considered as a reasonable one for recovery of any amount erroneously paid.

4. However, the learned standing counsel for the respondent would submit that although personal hearing notice dated 04.04.2022 was issued to the petitioner by the respondent directing them to appear on 18.04.2022, despite receipt of the said notice, the petitioner never came forward to submit their reply or appeared in person aggrieved by the

impugned order. Therefore, according to him, this writ petition is not maintainable.

5. The following are the undisputed facts:-

(a) The show cause notice seeking for recovery of duty drawback from the petitioner is dated 16.08.2017 pertaining to the export of shipments made by the petitioner during the years 2004-2005.

(b) The said show cause notice was issued after a lapse of more than 12 years from the date when the shipments were made by the petitioner.

(c) Replies dated 28.08.2017 and 13.04.2022 were sent by the petitioner requesting further time to submit a detailed reply in view of the fact that the shipments pertain to the years 2004-2005, which are old shipments. The said request of the petitioner has not been considered under the impugned order and the same is also not reflected in the impugned order.

6. The Hon'ble Supreme Court in the decision relied upon by the learned counsel for the petitioner in ***Citedal's case (cited supra)*** has held that any demand from any statutory authority will have to be made within

a reasonable period.

7. In a similar issue seeking for recovery of duty drawback, Gujarat High Court in ***Pratibha Syntex Ltd's case (cited supra)*** has held that under no circumstances, can a demand be made beyond the period of three years and it is further held that 3 years' period is the maximum period and beyond the said period, it would amount to an inordinate delay.

8. In the case on hand, the shipments for which a recovery of the duty drawback is sought for from the petitioner are pertaining to the years 2004-2005, whereas a demand has been made by the respondent for recovery of the same through a show cause notice only in the year 2017, after a lapse of 12 years, which, in the considered view of the Court, is an inordinate delay and cannot be treated as a reasonable one. This Court is in agreement with the view taken by the Gujarat High Court in the aforesaid decision involving a similar issue.

9. Though the learned standing counsel for the respondent

submitted that personal hearing notices were sent in the year 2017 to the petitioner and the same was not responded to, the said contention has to be rejected, since those personal hearing notices were also sent belatedly, i.e., after a lapse of 12 years from the date when the petitioner had made shipments. The respondent has also not considered the replies dated 28.08.2017 and 13.04.2022 sent by the petitioner seeking further time for submitting a detailed reply, and the said replies are also not reflected in the impugned order passed by the respondent. Therefore, on the ground of violation of the principles of natural justice as well as on the ground that the impugned order has been passed after a lapse of 12 years from the date when the shipments were actually made by the petitioner, this Court has to necessarily quash the impugned order. Accordingly, the impugned order dated 27.05.2022 passed by the respondent is quashed and the writ petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

07.03.2025

Index: yes/no
Neutral citation: yes/no
speaking/non-speaking
rkm

To

The Assistant Commissioner of Customs (Chennai-IV),
No.60, Rajaji Salai,
Customs House, Chennai – 1.

ABDUL QUDDHOSE,J.

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