IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.27053 of 2022
and
W.M.P.No.26271 of 2022

M/s.D2D International,
(Represented by its Proprietor, Shri Sasikumar Subbaiya)
D.No.6/139-A, MSS Industrial Estate,
Kuppuchipalayam, Allalapuram Road,
Veerapandi (Po), Tirupur – 641 605. ..Petitioner

Vs.

The Assistant Commissioner of Customs,
Drawback (BRC), N.S.II, JNCH
Office of the Principal Commissioner of Customs,
Mumbai-II, Jawaharlal Nehru Custom House,
Sheva, Tal-Urban, District – Raigad,
Maharashtra – 400 707. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorari, calling for the records of the respondent in Order-in-Original 1234/2021-22/AC/NSII/JNCH dated 02.02.2022 and quashing the same.

For Petitioner : Mr.S.Durairaj

For Respondent : Mr Rajendran Raghavan
Senior Panel Counsel
Mr T. Nalindhar
Junior Panel Counsel

ORDER

This Writ Petition has been filed challenging the impugned order dated 02.02.2022 passed by the respondent confirming the demand of Rs.1,32,80,667/- along with applicable interest payable by the petitioner on account of the petitioner not having complied with the provisions of Rule 16A of the Customs, Central Excise & Service Tax Drawback Rules, 1995 r/w. proviso to Section 75(1) of the Customs Act, 1962 and Foreign Exchange Management Act (FEMA), 1999.

2. The petitioner has challenged the impugned order on the ground of violation of principles of natural Justice. According to the petitioner, they were not afforded three personal hearings as per the respondent's own Circular. According to the petitioner, the respondent ought to have provided three personal hearings to the petitioner, which is mandatory. According to the petitioner, only one personal hearing was afforded. The learned counsel for the petitioner would also submit that the petitioner has complied with the provisions of Rule 16A of the Customs, Central Excise & Service Tax Drawback Rules, 1995 r/w. proviso to Section 75(1) of the Customs Act, 1962 and Foreign Exchange Management Act (FEMA), 1999. The petitioner claims that he is having all Bank Realization Certificates for the export, which are the subject matter of the impugned demand. Therefore, the petitioner claims that the impugned demand has been passed by total non-application of mind.

3. The learned counsel for the petitioner would also submit that if one more opportunity is granted to the petitioner to contest the impugned proceeding, the petitioner will be able to convince the respondent that they have complied with Rule 16A of the Customs, Central Excise & Service Tax Drawback Rules, 1995 r/w. proviso to Section 75(1) of the Customs Act, 1962 and Foreign Exchange Management Act (FEMA), 1999. The petitioner has also produced certain Bank Realization Certificates before this Court with regard to the subject exports for which demand has been made from 2009-10 to 2013-14. As seen from the impugned demand, duty drawback has been claimed by the respondent only for the said period.

4. On the other hand, the learned Senior Panel Counsel assisted by the Junior Panel Counsel would rely upon the counter filed before this Court by the respondent and would submit that this writ petition is not maintainable, since there is an appellate statutory remedy available to the petitioner under Section 128 of the Customs Act. They would also submit that only by following the due procedure established under law and by adhering to the principles of natural Justice, the impugned order in original came to be passed against the petitioner. They also referred to the relevant paragraphs in the counter affidavit filed by the respondent before this Court.

5. The impugned order in original has been passed only on the ground that the petitioner did not produce the Bank Realization Certificates for the subject exports for the periods 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14. The petitioner has filed documents viz., the Bank Realization Certificates for the subject period viz., from 2009-10 to 2013-14 before this Court. The petitioner also categorically contends that they are having all the requisite documents including the Bank Realization Certificates from 2009-10 to 2013-14 and therefore they have categorically contended that they are not liable to pay the amount demanded by the respondent under the impugned demand. The petitioner has challenged the impugned order in original on the ground of violation of principles of natural Justice.

6. Admittedly, as seen from the impugned order in original only one personal hearing was afforded to the petitioner. The petitioner has also relied upon the circular issued by the Central Board of Excise and Customs dated 10.03.2017 which reveals that three personal hearings will have to be afforded. Though the same is disputed by the learned Standing Counsel for the respondent who would submit that in case of claim for duty drawback, there is no requirement for the respondent to grant three personal hearings. This Court is of the considered view that since the petitioner claims that they are having all the Bank Realization Certificates for the subject period viz., from 2009-10 to 2013-14 they must be granted one more opportunity to produce all the relevant documents to establish their case that they are not liable to pay the amount as adjudicated under the impugned order in original. He would also submit that the Circular relied upon by the learned counsel for the petitioner also does not stipulate that the said Circular is not applicable to duty drawback claims.

7. The learned counsel for the petitioner also relied upon the Division Bench judgment of this Court dated ***28.09.2021*** passed in ***W.A.No.2465 of 2021*** in the case of ***M/s.Kiruba Export Vs. The Commissioner of Customs and another*** and in the said decision also involving a duty drawback claim, in paragraph No.5, it has been made clear by the Division Bench by following the Circular issued by the Customs Department that the adjudicating Authority has to proceed to fix the date and time for personal hearing and atleast three opportunities should be given with sufficient interval of time, so that the noticee may avail an opportunity of being heard and separate communication should be made to the noticee for each opportunity of personal hearing.

8. In the case on hand, admittedly as seen from the impugned order in original, the above procedure has not been followed. Only one personal hearing was afforded and thereafter the impugned order in original came to be passed. Since the petitioner has also filed documents before this Court to establish their case that they have the Bank Realization Certificates for the subject period for which the demand has been made and since only one personal hearing was afforded to the petitioner prior to passing of the impugned order in original, necessarily one more opportunity should be granted to the petitioner to place all the relevant documents, which includes the Bank Realization Certificates for the subject period from 2009-10 to 2013-14 to enable the respondent to consider the matter afresh on merits and in accordance with law and thereafter decide as to whether the petitioner is still liable to pay the amount as per the impugned demand or not.

9. Since the respondent had violated the principles of natural Justice and since the petitioner has also filed documents to substantiate their contention that they are not liable to pay the amount stipulated under the impugned order in original, this Court is of the considered view that the impugned order in original has to be quashed and the matter has to be remanded back to the very same respondent for fresh consideration on merits and in accordance with law and after affording an opportunity to the petitioner to produce the Bank Realization Certificates for the subject period and other documents, if any. This Court is not expressing any opinion on the merits of the petitioner's contentions. It is for the respondent to consider the same on merits while passing the final orders pursuant to the directions issued by this Court today.

10. For the foregoing reasons, the impugned order in original dated 02.02.2022 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 petitioner is permitted to submit the Bank Realization Certificates for the subject period within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the same within the stipulated time, the respondent shall pass final orders on merits and in accordance with law within a period of eight (8) weeks thereafter by adhering to the principles of natural justice. No costs. Consequently, the connected miscellaneous petition is closed.

25.07.2025

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Index : Yes/No
Neutral Citation : Yes/No
Speaking order/ Non-speaking order

To:-

The Assistant Commissioner of Customs,
Drawback (BRC), N.S.II, JNCH
Office of the Principal Commissioner of Customs,
Mumbai-II, Jawaharlal Nehru Custom House,
Sheva, Tal-Urban, District – Raigad,
Maharashtra – 400 707.

ABDUL QUDDHOSE, J.

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