



W.P.(MD)No.15207 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.15207 of 2020 and
WMP(MD) No.12806 of 2020

M/s. Accoladee
Represented by its Partner,
Mrs.K.Eswari,
Kaikalan Kadu,
Thanneerpandal Colony,
Anuppapalayam (PO),
Avinashi Road,
Tiruppur - 641 652.

Petitioner

Vs.

1.The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin – 628 004.

2.The Assistant Commissioner of Customs,
St.John Inland Container Depot,
1663/28 Harbour Express Bye Pass Road,
Tuticorin – 628 008.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus and call for the records pertaining to the impugned order dated 09.09.2020, by the 1st respondent in CBOEC/E/2020/03758 and quash the same and further direct the 1st respondent to permit conversion of the shipping bill nos.



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4885813/08.09.14, 4885840/08.09.14 & 4885839/08.09.14 from 'drawback shipping bills to drawback-cum-advance authorization' shipping bills.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.R.Vijaykarthikeyan

ORDER

This Writ Petition has been filed to quash the impugned order dated 09.09.2020, by the 1st respondent in CBOEC/E/2020/03758 and to direct the first respondent to permit conversion of the shipping bill nos. 4885813/08.09.14, 4885840/08.09.14 & 4885839/08.09.14 from 'drawback shipping bills to drawback-cum-advance authorization' shipping bills.

2.The brief facts of the case are as follows:

The petitioner is a manufacturer and exporter of garments. In the course of their business, the petitioner had obtained Advance Authorization No.3210077033 dated 08.07.2014 from the Joint Director General of Foreign Trade (JDGFT), Coimbatore for import of "100 % polyester knitted fabric, micro polar fleece print both side brushed and



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one side anti-pill” and the petitioner had an export obligation to export ladies pyjama set consisting of two garments, namely (i) 100% cotton knitted ladies top (procured indigenously) and (ii) 100% polyester knitted fabric, micro polar fleece print both side brushed and one side anti-pill fab plant (imported under the above-mentioned advance authorization) for a value of USD 223,822 within a period of 180 months from the date of issue of authorization.

2.1. On the strength of the above mentioned advance authorization, the petitioner imported raw materials and the petitioner manufactured the pyjama and exported the same by filing shipping bill Nos.4885813/08.09.14, 4885840/08.09.14, 4885839/08.09.14 and the same were filed under the 'draw back scheme'. Since the top portion of the pyjama was manufactured using inputs/fabrics procured locally and the pant was manufactured using the imported inputs, under advance authorization scheme, the shipping bills had to be filed under the 'Drawback-cum-Advance Authorization Scheme'. Therefore, the petitioner filed a request vide letter dated 08.12.2014 to the second respondent, seeking to convert the 'drawback shipping bill' to 'drawback-



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cum-advance authorization shipping bill'. As there was no response, the petitioner sent reminders, dated 26.08.2015 & 16.10.2017 to the Deputy Commissioner. Personal hearing was fixed on 21.05.2018. During the personal hearing, the petitioner was enquired as to whether the petitioner had availed the benefit of any export promotion scheme and asked to surrender the proportionate drawback pertaining to the aforesaid shipping bills, for which, the petitioner also communicated their readiness.

2.2. According to the petitioner, the Joint Director General of Foreign Trade (JDGFT), Coimbatore initiated proceedings for imposition of penalty on the ground that the petitioner had not fulfilled their export obligation in terms of the Advance Authorization granted to them, vide order-in-original dated 16.03.2018 in F.No.32/21/040/00040/AM15, imposed a penalty of Rs.29,75,437/- Aggrieved by the same, the petitioner preferred a statutory appeal before the Additional Director General of Foreign Trade, Chennai and the said appeal is pending disposal.



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2.3.In the meanwhile, the petitioner submitted an application dated 14.03.2020 to the first respondent for conversion of the shipping bills in terms of Board Circular No.36/2010, dated 23.09.2010, as the petitioner fulfilled all the conditions mentioned in paragraph 3 of the said Circular. The application was rejected on the ground of limitation. Once again the petitioner made a request for conversion/amendment of the shipping bills. Since, there was no response, the petitioner had sent reminders to the first respondent, which also gone in vain. Therefore, the petitioner submitted a grievance in Centralized Public Grievance Redressal System on 19.08.2020 and the same was disposed of by the first respondent on 09.09.2020, stating as under:-

“In respect of your grievances, the Shipping Bills 4885813/08.09.2014, 4885840/08.09.2014 and 4885839/08.09.2014 which were filed under DBK scheme (code 19) was cleared for export under RMS without any examination. The scheme change to code 64 under drawback cum DEEC licence requires rigorous examination norms and as per Circular No.36/2010-Cus, dated 23.09.2010 for scheme changes, the level of examination made should be higher, for examining the composition of the 'imported material used in the export cargo', which has not occurred in the instant case.



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Further verification of the records furnished at the time of export could not be conducted, since the same are not available at present and hence the applicability of the conditions stipulated under Sec.149 of CA, 1962 & Circular No.36/2010, dated 23.09.2010 could not be verified.

In view of the above, your request for conversion of DBK Sbs to DBK cum DEEC SB cannot be considered at this juncture.

3.The learned counsel for the petitioner would submit that the petitioner's efforts for conversion of 'drawback shipping bill' to 'drawback-cum-advance authorization shipping bill' are vain, the petitioner has approached this Court with the present Writ Petition.

4.The learned Special Government Pleader has filed a detailed counter affidavit and the facts set out in the counter affidavit has been reiterated.



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5.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

6.On perusal of the documents, it is revealed that the advance authorization licence taken by the petitioner is not disputed. The petitioner had exported garments under the Shipping Bill Nos. 4885813/08.09.2014, 4885840/08.09.2014 and 4885839/08.09.2014 under DBK Scheme and the said shipping bills were cleared for export under RMS, without any examination and LEO granted on 09.09.2014. The contention of the learned Special Government Pleader that the request for conversion of 'drawback shipping bill' to 'drawback-cum-advance authorization shipping bill' said to have been filed by the petitioner on 08.12.2014 before the Custom House, Tuticorin could not be traced after lapse of five years and six months cannot be accepted by this Court. It is to be noted that since there was no response from the 1st respondent, the petitioner submitted a grievance in Centralized Public Grievance Redressal System and the same was also disposed of by rejecting the request of the petitioner for conversion of the shipping bills. Moreover, the request for conversion was given as early as on



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08.12.2014, within three months from the date of export. It is unfortunate on the part of the respondent that without considering the petitioner's request in a true spirit and without giving any opportunity to the petitioner, the impugned order came to be passed.

7. In view of the same, the impugned order in CBOEC/E/2020/03758 dated 09.09.2020 passed by the first respondent is set aside and the matter is remanded back to the first respondent for fresh consideration after giving reasonable opportunity including the personal hearing and appropriate orders shall be passed on merits and in accordance with law. Such exercise shall be completed by the first respondent, within a period of six weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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