



WP(MD) No.11258 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
07.01.2025

PRONOUNCED ON
28.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.11258 of 2021

WMP.(MD).No.25698 of 2024

RA.Kamaraj

... Petitioner

VS.

1.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Ministry of Finance, Sub Regional Office,
No/7-1-32, Mahathma Ganthi Nagar Main Road,
Madurai -14.

2.The Senior Intelligence Officer,
Office of the Directorate of Revenue Intelligence,
23/14, Celin Garden Roche Colony,
South Beach Road,
Tuticorin.

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first respondent to return



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back the amount of Ten lakhs remitted by way of Demand Draft dated 21.11.2020 as collected in complaint F.No.DRI/CZU/MDU/VIII/48/ENQ-1/INT-08/2019 and pass such further order.

For Petitioner : Mr.V.Ragavachari Sr., counsel for
Mr.N.Sundaresan

For Respondents : Mr.R.Nandakumar CGSC for RR1&2

ORDER

This writ petition had been filed for a direction to reimburse the amount of Rs.10,00,000/- paid by the petitioner to the respondents as advance penalty towards excess claim made on alleged mis-classification of exported items.

2. Heard Mr.V.Ragavachari, learned Senior counsel appearing on behalf of Mr.N.Sundaresan, learned Counsel appearing for the Petitioner and Mr.R.Nandakumar, Central Government Standing Counsel for the respondents.



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3. Mr.V.Raghavachari, learned Senior counsel for the petitioner

submits that the petitioner is the managing partner of M/s. Kwalitee Fabs, a registered partnership firm. The said registered firm has been carrying on business since 2002, which involved manufacturing and purchasing of yarn, clothes, Dyes, Chemicals and Knitted fabrics, all types of Home furnishing textile items, Made-ups and coir products through handloom and power loom. Further, the firm was registered with the Office of Director General of Foreign Trade and TEXPROCIL, HEPC and PDEXCIL, for the purpose of exporting manufactured items. The partnership firm is a Merchant and a Manufacturer Exporters Service Providers which shall be categorised under the scale of 1 to 5 stars depending on its total performance for the consecutive 4 years. The firm has achieved a performance of fifteen cores and obtained One Star Export House from the Ministry of Commerce and Industry in the year 2015 and has received a Gold Medal from the Ministry of Textiles for the years 2014-15 and 2015-16.

4. He further contends that the firm distributes yarn to weavers for weaving works, either through handloom or powerloom. Later, the finished clothes will be handed over to the firm and weavers collect their payment.



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On receipt of finished material, the firm will classify the clothes as handloom or powerloom according to their process and send it to customs authority for verification along with invoice copy before exporting the same to the firm's foreign customers. The customs authority will physically check and verify the declaration of the contents. Further, only after the customs clearance, the goods will be loaded and shipped to foreign customers. Thereafter, the firm receives the shipment bill, and the textile committee issues the Certificate of Origin based on the verification. Further, the importer country also declares the contents which should match with the contents verified by the Customs authority. Any mismatch is an offence of fraudulently misclassified in foreign country which imports the items.

5. He expostulates that the Ministry of Textiles, Government of India introduced the Merchandise Exports from India Scheme (MEIS) under Foreign Trade Policy of India (FTP 2015-20) to promote the manufacture and export of notified goods/products. After introduction of this Scheme, the firm exported the handloom and powerloom materials separately by proper declaration and received the incentive as per the value of the exported goods. The respondents on 29.10.2019 and 30.10.2019 inspected



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the firm and seized certain documents as listed out in the mahazar. The respondents have accused the firm that the firm has fraudulently misclassified the contents of the goods exported from the year 2016-17, 2017-18 and 2018-19 and claimed incentives of handloom instead of powerloom items. On the same day the petitioner was forced to give an acceptance letter and out of fear that the whole business would be stopped, the petitioner gave an acceptance letter and paid an advance penalty of Rs. 10 lakhs by way of demand draft dated 21.11.2019. Moreover, the respondents called upon the petitioner for enquiry on 18.02.2020 to Tuticorin office and detained the petitioner and registered a complaint under Section 132 and 135(A) of the Customs Act.

6. He further contends that the petitioner came out on bail and received a copy of the remand application and got to know that the respondents arrived at a conclusion on their own calculation. Further, the said complaint filed by the respondents merely stated that it is based on substantive information without describing the substantive information. Further, he submits that the complaint is purely on a hypothetical statement of 'Substantive information' without disclosing it and action is being



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initiated and imposing and collecting penalty is highly irrational and illegal.

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Hence, the petitioner seeks the interference of this court to direct the respondent to repay the penalty collected.

7. He would further rely upon the invoice to contend that what had been exported is only power-looms and had also produced a certificate indicating that the exported goods are power-looms. Hence, the petitioner had not sought for any incentives on the basis that what has been imported was handlooms. Therefore, the entire proceedings that had been initiated by the respondent is an arbitrary, colourable exercise of power. He would further submit that on the strength of the impugned show cause notices, which had been pending challenge in the Writ Petition and have been proceeded further and an order had been passed by the respondent, hence, he had taken out an application to annul the said order.

8. Countering the arguments of the learned counsel for the petitioner, Mr.R.Nandakumar, learned counsel for the respondents submits that the petitioner had fraudulently availed benefits to a tune of Rs.1.92 Crores, specifically provided by the government for Handloom Industry and have



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willfully mis-declared the items manufactured in power loom as manufactured in handloom at the time of export in the shipping bills. The documentary evidence, recovered under mahazar dated 30/10/2019 at the factory premises corroborates with the material evidence recovered from the associate premises of M/s.Kwalitee Fabs and confirmed the availed excess benefit. The petitioner has orchestrated the offence and has systematically executed it. The petitioner also admitted the offence and shifted the entire blame of committing the offence on the documentation team headed by Smt.Akila as due to the negligence of documentation. But the same was proved false by the statement given by the Smt.Akila on 28.11.2019 and exposed the fraudulent intent of the petitioner.

9. He further submits that the petitioner was arrested on 18.02.2020 for his direct role in committing the offence and was enlarged on bail by the Hon'ble Court on 05.03.2020. Further, he contends that it is the responsibility of the exporter to make a true declaration and a complete disclosure and based on such declaration the goods are cleared for export. When the declaration filed by the exporter is found to be improper or fraudulent, the Custom Officer is empowered under the Customs Act 1962



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to initiate action against the exporter and to recover the excess benefit availed along with interest and penalty. After the completion of the investigation, 14 show cause notices detailing all the findings of the investigation were issued and an order dated 30.09.2024 was passed by the Commissioner of Customs, Tuticorin confirming the fraudulent misclassification of items to avail the benefit under MEIS scheme who was not arrayed as party in this writ petition. In this context, he relied upon the judgment of Apex court in a case of Moresnar Yadaorao Mahajan Vs Vyankatesh Sitaram Bedi (D) Thr. LRS and others stated that when a necessary party to a case is not impleaded, the case itself is liable to be dismissed. He further submits that the amount of Rs.10 lakhs paid as advance penalty by the petitioner was taken as appropriate payment towards the demand confirmed for a sum of Rs.1,92,88,594/-. The said order is also appealable before an appellate authority. Hence, to reimburse the advance penalty at this moment is not possible and the petitioner is very much entitled to approach the appellate authority against the order shared 30.09.2024, cannot bypass the legal remedies available with the department. In this context, he relied upon a judgment of the Apex Court in the case of Girjesh Shrivastava and others Vs State of Madhya Pradesh and others



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reported in (2010) 10 SC 707. Therefore, he prayed to dismiss the writ petition as infructuous.

10. I have heard the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

11. The prayer that had been sought for in the Writ Petition is a simplicitor mandamus seeking for a direction to refund an amount of Rs. 10,00,000/- that was remitted by the petitioner pursuant to the complaint of the respondent on the allegations of mis-declaration of the goods that had been exported by the petitioner. It has also been admitted case of the petitioner that the show cause notices have been issued calling upon the petitioner as to why the penalty should not be imposed for the conduct of him having mis-declared the goods as handlooms instead of power-looms, by which he had claimed MIES concession.

12. It is also brought on record that since the show cause notices had been issued by the various authorities, a common adjudicating authority was appointed to adjudicate the show cause notices issued to the petitioner. It has been brought on record that the petitioner had also attended a hearing



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before the common adjudicating authority, who had also passed an order on 30.09.2024. The said order is sought to be annulled by the petitioner on the ground that had been raised in the Writ Petition. It is to be seen that the petitioner had neither challenged the show cause notices that had been issued to him nor had he challenged the order dated 30.09.2024. All that he had sought for is refund of a sum of Rs.10,00,000/- collected based on the complaint that had been registered against him. The said amount of Rs. 10,00,000/- received from the petitioner, had also been appropriated by the order of the common adjudicating authority under the proceedings dated 30.09.2024.

13. In such view of the matter, the mandamus as sought for by the petitioner cannot be granted and it is for him to challenge the order of common adjudicating authority, dated 30.09.2024. Even though a Miscellaneous Petition had been instituted to annul the order, this Court is of the view that such a Miscellaneous Petition cannot be sustained and it is for the petitioner to challenge the said order dated 30.09.2024, independently and the reason not to entertain the WMP is also that the common adjudicating authority, who has passed the order dated 30.09.2024



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is not a party respondent in this Writ Petition.

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14. In fine, the Writ Petition is dismissed with a liberty to the petitioner to challenge the order dated 30.09.2024, in the manner known to law. However, there shall be no order as to costs. Consequently connected WMP.No.25698 of 2024 is also dismissed.

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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K.KUMARESH BABU.,J.

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A Pre-delivery order made in
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