



2024:KER:20457

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 14TH DAY OF MARCH 2024 / 24TH PHALGUNA, 1945

WP(C) NO. 9986 OF 2024

PETITIONER/S:

**M/S. FRONTLINE EXPORTS PVT. LTD,
11 814 INDUSTRIAL ESTATE, AROOR, ALAPUZHA,
KERALA - 688 534. REPRESENTED BY DIRECTOR,
SHRI. MOHAMMED SHAMEER,
PIN - 688534**

**BY ADVS.
M. BALAGOPAL
R. DEVIKA (ALAPPUZHA)
ANJALI MENON**

RESPONDENT/S:

**THE DEPUTY COMMISSIONER (DRAWBACK,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,
WILLINGDON ISLAND, COCHIN, PIN - 682009**

SRI. SREELAL N. WARRIER- SC

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**JUDGMENT**

Petitioner is a Company engaged in sea food export. The petitioner is entitled to claim duty draw back under Section 75 of the Customs Act, 1962, at the rates published in the Drawback Schedule. According to the petitioner, the petitioner had exported marine products to various buyers during the period from 06.01.2020 to 30.06.2022 and claimed duty drawback . The petitioner has now been served with Ext.P1 order confirming the demand of Rs.87,58,913/- (Rupees Eighty seven lakhs fifty eight thousand nine hundred and thirteen only), alleging non-repatriation of export proceeds against 374 shipping bills mentioned therein.

2. Learned counsel appearing for the petitioner submits that the demand raised on the basis that there is non-repatriation of export proceeds in respect of 374 shipping bills for the period from 06.01.2020 to 30.06.2022, is absolutely incorrect. It is submitted that the notice issued by the adjudicating authority, calling upon the petitioner to produce the details was not received by the petitioner. It is submitted that Ext.P2 certificate issued by the Federal Bank Limited will indicate that there has been repatriation of export proceeds and



that wherever there has not been any repatriation, the petitioner has paid the amounts as is evident from Exts.P4 and P5 receipts issued by the Customs Department. It is submitted that, in such circumstances, Ext.P1 order of adjudication may be set aside and the adjudicating authority may be directed to reconsider the matter afresh, after affording an opportunity of hearing to the petitioner.

3. Learned Standing Counsel appearing for the Department would vehemently oppose the grant of any relief to the petitioner. It is submitted that, a reading of Ext.P1 order will show that the demand against the petitioner was on account of the failure of the petitioner to produce necessary documents substantiating the repatriation of export proceeds. It is submitted that the petitioner cannot be heard to contend that no notice was received by the petitioner. It is submitted that there is no ground made out for interference with Ext.P1 order under Article 226 of the Constitution of India.

4. Having heard the learned counsel appearing for the petitioner and Adv. Sreelal N. Warriar, the learned Standing Counsel appearing for the Customs-Department, I am of the view that in the light of the submission of the learned counsel appearing for the petitioner that the finding in Ext.P1 that there



has not been repatriation of export proceeds in respect of 374 shipping bills during the period from 06.01.2020 to 30.06.2022 is obviously a mistake. I am of the opinion that one further opportunity can be granted to the petitioner to prove before the adjudicating authority that such export proceeds have actually been repatriated. Accordingly, to provide the petitioner one last opportunity to prove before the adjudicating authority that the export proceeds have already been repatriated, Ext.P1 order will stand set aside. The petitioner shall appear before the respondent at 11.00 A.M on 26.03.2024 along with all necessary documents to prove that there has been repatriation of export proceeds as claimed by the petitioner. The respondent shall, thereafter, proceed to adjudicate the matter afresh, after affording an opportunity of hearing to the petitioner. This order is issued taking into consideration the fact that Ext.P2 *prima facie* suggests that there has been repatriation of export proceeds and this fact has not been noticed by the respondent in Ext.P1 order.

Sd/-

GOPINATH P .

JUDGE



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APPENDIX OF WP(C) 9986/2024**PETITIONER EXHIBITS**

Exhibit P1	TRUE COPY OF THE ORDER-IN-ORIGINAL NO. NO. 04/2024 (DBK-BRC) DATED 08.01.2024 ALONG WITH ANNEXURE-I, ISSUED BY THE RESPONDENT TO THE PETITIONER
Exhibit P2	TRUE COPY OF THE CERTIFICATE DATED 30.01.2024 ISSUED BY FEDERAL BANK, CORPORATE CLIENT SERVICE CENTER, AROOR SHOWING THE REPATRIATION OF FUNDS AGAINST THE SHIPPING BILLS QUOTED IN EXT P-1.
Exhibit P3	TRUE COPY OF THE CALCULATION SHEET OF DIFFERENTIAL DRAWBACK ALONG WITH INTEREST UP TO 20.02.2024.
Exhibit P4	TRUE COPY OF THECHALLAN NO. CM-179 DATED 19.02.2024 REMITTING THE DIFFERENTIAL DRAWBACK OF RS. 4,74,267/-
Exhibit P5	TRUE COPY OF THECHALLAN NO.CM-180 DATED 19.02.2024 REMITTING THE INTEREST ON DIFFERENTIAL DRAWBACK OF RS. 2,26,033/- .
Exhibit P6	TRUE COPY OF THE BANK REALISATION CERTIFICATE NO. FDRL0009998220073006 DATED 28.07.2022 AGAINST SHIPPING BILL NO. 1933329 DATED 06.06.2022
Exhibit P7	TRUE COPY OF THE BANK REALISATION CERTIFICATE NO. FDRL0009998220073019 DATED 28.07.2022 AGAINST SHIPPING BILL NO. 1933329 DATED 06.06.2022
Exhibit P8	TRUE COPY OF THEREQUEST LETTER DATED 20.02.2024 SUBMITTED BY THE PETITIONER