IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.7270/2014

Alstom T&D India Ltd.,
19/1, GST road, Pallavaram
Chennai-43.
Represented by its India Tax Director,
L.V.Srinivasan. .. Petitioner

Versus

1.The Assistant Director General of Foreign Trade, Office of the Zonal Director General of Foreign Trade, Shashtri Bhavan Annexe, 4th & 5th Floor, 26, Haddows Road, Chennai 600 006.

2.The Director General of Foreign Trade Udyog Bhavan, H Wing, Moulana Hazad Road, New Delhi 110011. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records on the file F.No.04/79/74/119/AM 06 of the 1st respondent and to quash the letter dated February 27, 2013 and direct the 1st respondent to grant DFCE license to the petitioner for the licensing year 2003-04.

For Petitioner : Mr.Joseph Prabakar

For Respondents: Mr.D.Vijayakumar, CGSC

ORDER

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.D.Vijayakumar, learned Central Government Standing Counsel for the respondents and perused the material available on record.

2.The petitioner has challenged the impugned proceedings dated 27.02.2012 by which the petitioner's application for issuance of Duty Credit under the DFCE Scheme was refused to be considered on the ground that only on submission of Status House Certificate for the base year 2002-03 is produced.

3.The petitioner would state that the said scheme, viz., Duty Free Credit Entitlement scheme, for status holders like Export House/Star Export House was announced on 31.03.2003, whereby the status holders having incremental growth of more than 25% in FOB value of exports subject to a minimum export turnover of Rs.25 crores were entitled to duty credit at 10% of the incremental growth in exports. The Duty Credit Scripts/goods imported were governed by the Actual User condition. The petitioner, admittedly was not eligible to be recognised as Star Export House in the light of the policy which was in vogue prior to 07.04.2005. As per the existing policy in para 3.2.6-A of the Export-Import Policy, 2002-07, it is provided that the scheme will be applicable to the status holders who were also the status holders as on 31.03.2003 and who had

achieved the minimum turnover of Rs.25 crores in the year 2003-04. An amendment was issued by a Public Notice No.69/2004-09 dated 07.04.2005, by which paragraph 3.2.6-A was amended stating that the scheme will be applicable to the Status Holders/Star Export House, who had achieved the minimum export turnover of Rs.25 crores in the year 2003-04. Therefore, the petitioner would contend that the question of being recognised as a Star Export House for the base year does not arise in the light of the amendment of the existing provisions. Therefore, the petitioner applied for recognition and by Office Memorandum dated 16.06.2006, the petitioner was recognised as Star Export House as on 01.04.2004.

4.Subsequently, no further proceedings were taken and therefore, the petitioner went before the Grievance Redressal Committee and the Grievance Redressal Commissioner also took a decision in favour of the petitioner and the Deputy Director of Foreign Trade addressed to the Ministry of Commerce and Industry, Government of India, to implement the decision of the Grievance Redressal Committee. In spite of the several representations, nothing happened till 2012 and the impugned order has been passed on 27.02.2012.

5.Learned Central Government Standing Counsel would submit that an opportunity of personal hearing was granted to the petitioner before the impugned order is passed.

6.It is to be pointed out that though an opportunity of personal hearing was granted, the impugned order does not reflect as to how and in what manner the public notice No.69/2004-09 dated 07.04.2005 is not applicable to the petitioner and in what way still the petitioner has to satisfy the recognition for the base year. Therefore, the impugned order is passed without sufficient reasons calling for interference of this Court. This court is of the view that the matter should be remanded back for fresh consideration by the respondent duly taking note of the amendment and also after affording an opportunity of personal hearing.

7.Accordingly, the writ petition is allowed and the impugned order dated 27.02.2012 passed by the respondent is set aside. The matter is remanded back to the 1st respondent for fresh consideration who shall hear the petitioner in person and pass appropriate orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

AP

To

1.The Assistant Director General of Foreign
Trade, Office of the Zonal Director General
of Foreign Trade, Shashtri Bhavan Annexe,
4th & 5th Floor, 26, Haddows Road,
Chennai 600 006.

2.The Director General of Foreign Trade
Udyog Bhavan, H Wing, Moulana Hazad
Road, New Delhi 110011.

1 cc to Mr.Joseph Prabakar, Advocate, sr. 7945
1 cc to Mr.D. Vijayakumar, Advocate, sr. CGSC, sr. 7605

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