IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18175 of 2015
and
M.P.No.1 of 2015

M/s.Flexion Imaging Solutions Private Limited,
Rep. By its Managing Direcotr K.Natarajan,
No.10, Kayarambedu, Guduvanchery (via),
Kanchipuram District, Tamil Nadu. ...Petitioner

Vs.

1. The Commissioner of Customs,
   Chennai IV Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Deputy Commissioner of Customs,
   Chennai II Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus to direct the respondents to remove the alert in the Electronic Data Interchange (EDI) System against the petitioner with regard to the alleged non-fulfilment of export obligation in respect of advance authorization No.0410102678, dated 04.03.2009 till the disposal of the appeal dated 19.04.2013 filed by the petitioner before the Additional Director General of Foreign Trade, Delhi.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.S.Xavier Felix, SCGSC

ORDER

With the consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. It is the claim of the petitioner Company that they had obtained an advance authorization bearing No.0410102678, dated 04.03.2009, from the office of the Additional Director General of Foreign Trade, Chennai, which authorised the petitioner to import synthetic fabric nylon taffeta coated fabric without payment of import duties and the petitioner was under an obligation to use these items to manufacture a fabric called 'cubelite' and to export the same within a period of 24 months from the date of issue of licence. Though the above said authorization permitted the petitioner to import a quantity of 114687 sq.mtrs., they imported a quantity of 11487.57 sq.mtrs. It is further stated that the petitioner has fulfilled the export obligation by exporting the fabric 'cubelite' for a value of Rs.18,15,492.80/- and they have also realized the foreign exchange within the period of 24 months as mentioned in the licence. In respect of the excess import of 21.57 sq.mtrs., the duty amount of Rs.316/- was also paid to the account of the respondents vide challan dated 19.04.2013. At this juncture, the petitioner had submitted an application dated 25.08.2010 before the Additional Director General of Foreign Trade, Chennai, for issuance of a redemption certificate, since such certificate was necessary to prove that the petitioner had fulfilled the export obligation cast upon them in terms of the advance authorization mentioned above. In the meanwhile, the office of the Joint Director General of Foreign Trade, Chennai, issued a show cause notice dated 19.02.2013 proposing to impose penalty on the petitioner for non-fulfilment of the export obligation on the ground that the petitioner did not submit the necessary documents to prove fulfilment of export obligation and thereafter, the said official, vide order-in-original dated 12.04.2013 imposed a fiscal penalty of Rs.5,25,000/- on the petitioner in terms of the provisions of Section 11(2) of the Foreign Trade (Development & Regulation) Act, 1992. As against the same, the petitioner has also filed an appeal, which is pending before the Additional Director General of Foreign Trade, Delhi. In the meanwhile, the export business of the petitioner was stopped in view of the order passed by the Joint Director General of Foreign Trade, Chennai, as stated above. However, the office of the Additional Director General of Foreign Trade, Chennai, passed an order vide their proceedings dated 28.07.2014, stating that since the appeal preferred by the petitioner is pending and not disposed of, the Assistant Commissioner of Customs - Gr-7 (DEEC), Chennai, was

directed not to stop the exports as long as the items are freely exportable. With these submissions, he prayed for allowing the writ petition.

3. Mr.S.Xavier Felix, learned counsel, by accepting the notice on behalf of the respondents, sought time to ascertain whether the order dated 28.07.2014 of the Additional Director General of Foreign Trade, Chennai, has been passed with condition.

4. But, this Court is not inclined to grant such request of the learned counsel for the respondents, for, the order passed by the Office of the Additional Director General of Foreign Trade, Chennai, vide their proceedings dated 28.07.2014, is very clear and explicit in directing the Assistant Commissioner of Customs - Grade-7 (DEEC), Chennai, not to stop the exports of the petitioner as long as the items are freely exportable, as the appeal preferred them is pending and not disposed of. Hence, since the appeal preferred by the petitioner is also pending before the Additional Director General of Foreign Trade, Delhi, the respondents are directed to remove the alert in the Electronic Data Interchange (EDI) System issued against the petitioner. Needless to mention that the order of this Court is subject to the result of the appeal now pending before the authority concerned. With this direction, the writ petition stands disposed of. No Costs. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
   Chennai IV Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Deputy Commissioner of Customs,
   Chennai II Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

3. The Additional Director General of Foreign Trade,
   Delhi.

1 CC to Mr.Hari Radhakrishnan, Advocate SR.No. 31182

W.P.No.18175 of 2015
and
M.P.No.1 of 2015

TS (CO)
PSI (25.06.2015)