IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25765 of 2014 and M.P.No.1 of 2014

M/s Jewels Magnum
rep. By its Managing partner,
Shri K.Srinivasan
Unit No.2 & 9A SDF Gem and
Jewellery Complex,
MEPZ, SEZ
Chennai - 600 0045 ...Petitioner

Vs

Development Commissioner,
MEPZ, Special Economic Zone,
Administrative Office Building,
Tambaram, Chennai - 600 045 ...Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order dated 03.09.2014 bearing no.8/127/2008/SEZ/3196 issued by the respondent and quash the same.

For Petitioner : Mr.R.Raghavan

For Respondents : Mr. C.Kanagaraj CGSC

O R D E R

Heard Mr.R.Raghavan, learned counsel appearing for the petitioner and Mr.C.Kanagaraj, learned Central Government Standing Counsel appearing for the respondent and with the consent of either side, the Writ Petition itself is taken up for disposal.

2. The challenge in this Writ petition is to the order-in-original dated 03.09.2014, by the said order, the respondent imposed penalty of Rs.61,76,00,000/- (Rupees sixty one crores and seventy six lakhs only) on the petitioner under Section 11(2) of

the Foreign Trade (Development & Regulation) Act, (herein after referred as FTDR Act), by exercising his power under Section 13 of the FTDR Act.

3. The facts which are necessary for disposal of the writ petition are as follows:-

The petitioner was granted permission for establishing a unit in MEPZ-Special Economic Zone for manufacturing Gold Bangles and Pendants vide letter of approval dated 10.06.2008. According to the respondent, the petitioner has exported " Gold Medallions", which is not the product approved in the list of authorised operators in the letter of approval. In terms of condition no. (vi) of the letter of approval, it was valid for one year from the date of issue, which is incumbent upon the petitioner to commence their production and inform the respondent within the said period.

4.According to the respondent, the petitioner violated the provisions of the said Special Economic Zone Act, 2005 (SEZ Act) and the Rules framed thereunder by manufacturing and exporting items not contained in the letter of approval and also not commenced their production within one year from the letter of approval nor sought for extention of time. A show cause notice dated 29.04.2014 was issued to the petitioner in exercise of power under Rule 54(2) of the SEZ Rules 2006 read with Section 13 & Section 11(2) of the FTDR Act calling upon the petitioner to show cause as to why action under Section 13 of the FTDR Act read with Rule 54 of the SEZ, Rules 2006 should not be taken otherwise.

5.The petitioner vide explanation dated 31.05.2014 submitted their explanation stating that the product manufactured are "Pendants" and they adopted the parlance test to the product and would contend that the product manufactured by them are classifiable as "Pendents" and it is not the case of mis-declaration. The personal hearing was afforded to the petitioner on 23.06.2014, in which the petitioner produced a raw material and also placed other documents, at that stage of the matter, ie., when the show cause notice was adjudicated, a Corrigendum was issued on 14.08.2014 to the show cause notice dated 29.04.2014, thus, it appears that the Corrigendum was issued after a period of four months that too after adjudication of the show cause notice. The petitioner had submitted his reply and when the personal hearing was in progress, in the Corrigendum, the respondent proposed to take action under Section 11 of the FTDR Act instead of Section 13 of the FTDR Act read with Rule 54 of SEZ Rules, 2006, as originally proposed, there was a material shift in the provisions of the Act, which is sought to be applied. Therefore, it is in effect of fresh proceedings, since the Sections of both the provisions of the statutes are different. Therefore, proper procedure of the respondent to quash the show cause notice with a liberty to issue a fresh show cause notice and the petitioner was granted further time of 15 days to file their reply.

6.It is not in dispute that the corrigendum was issued only on 14.08.2014 and the 15 days period should be computed from the date on which the petitioner received corrigendum. According to the petitioner, he received the corrigendum only on 19.08.2014 and the 15 days period expires on 03.09.2014 and on the same day the impugned order has been passed. It is an admitted fact that there was no personal hearing afforded to the petitioner after corrigendum was issued. That apart the petitioner's grievance is that they did not have any time to submit the reply to the corrigendum wherein they have also questioned the jurisdiction of the authority to invoke provisions of the Act. In fact a draft reply to the corrigendum to the show cause notice has been filed in the typed set of papers, which according to the petitioner, they have made ready and could have submitted, if opportunity would have granted.

7.In the light of the above, it is evidently clear that the impugned order is vitiated on account of violation of principles of natural justice. As noticed above, the petitioner did not have sufficient opportunity to submit their reply to the corrigendum issued to the show cause notice on 14.08.2014. Subsequently, the petitioner was not afforded opportunity of personal hearing after the corrigendum was issued and such personal hearing should have been granted to the petitioner after they had submitted their reply. The petitioner had no such opportunity to submit their reply, hence on this ground alone the impugned order is liable for interference. It is made clear that this Court has not adjudicated the correctness of the submission and gone into the merits of the petitioner's contention, whether the product manufactured by them falls within the letter of approval which was granted and whether the petitioner had commenced production within a period of one year from the date of letter of approval, these issues have to be adjudicated by the authority after affording opportunity to the petitioner.

8.Accordingly, the Writ petition is allowed and the impugned order is quashed and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to submit their reply to the corrigendum dated 14.08.2014 within a period of fifteen days from the date of receipt of copy of this order by enclosing all the documents in support of their claim. It is open to the petitioner to raise the question of jurisdiction to the respondent, who imposed penalty etc., On receipt of the reply, the respondent shall afford personal hearing to the petitioner and adjudicate to the show cause notice and pass final orders within a period of four weeks after conclusion of personal hearing. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

ssd

To

Development Commissioner,
MEPZ, Special Economic Zone,
Administrative Office Building,
Tambaram, Chennai - 600 045

1 cc to Mr.R. Raghavan, Advocate, Sr. 7747
1 cc to Mr.C. Kanagaraj Associates, Sr. 7397

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NM (CO)
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