IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.Nos.36771 and 36772 of 2015

M/s.Leaap International Pvt. Ltd.,
represented by its Director,
S.K.murthy,
Plot No.1497, J Block,
16th Main Road, Anna Nagar,
Chennai-600 040. .. Petitioner in both writ petitions

Vs.

1.The Zonal Joint Director General of Foreign Trade,
Shastri Bhawan Annexe,
26, Haddows Road,
Nungambakkam,
Chennai-600 006.
2.The Foreign Trade Development Officer,
Shastri Bhawan Annexe,
26, Haddows Road,
Nungambakkam, Chennai-600 006. .. Respondents in both writ petitions

Both these writ petitions are filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 29.10.2015 passed by the second respondent in File Nos.04/21/071/00051/AM16 and 04/21/071/00052/AM16, respectively, and quash the same and further direct the respondents to approve the claim filed by the petitioner under the "Served from India Scheme" for the years 2013-14 and 2014-15, respectively.



For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.Su.Srinivasan, ASG

COMMON ORDER

Heard.

2 Both these writ petitions have been filed, praying that this Court may be pleased to issue a Writ of Certiorarified Mandamus, to quash the impugned orders, dated 29.10.2015, passed by the second respondent, in File Nos.04/21/071/00051/AM16 and 04/21/071/00052/AM16, respectively, and to direct the respondents to approve the claims filed by the petitioner, under the "Served from India Scheme", for the years 2013-14 and 2014-15, respectively.

3 It has been stated that the petitioner is a Company incorporated under the Companies Act, 1956. It is engaged in the business of total logistics service provider, which includes activities related to Multi model Transport Operator, Freight forwarding, Customs clearance, etc. The petitioner is registered with the Service Tax Department and it has been regularly remitting the service tax for the services rendered in India, which are taxable in terms of the Finance Act, 1994. The petitioner is also registered with the Service Export Promotion Council, as a service provider, under the heading "Supporting Services for Maritime Transport", specified in Appendix 41 of the Handbook of Procedures.

4 It has been further stated that the Ministry of Commerce, Government of India had notified the Foreign Trade Policy, 2009-14, in accordance with the powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992. Paragraph 3.12 of the Foreign Trade Policy provides for the "Served from India Scheme". The objective of the said scheme is to accelerate the growth in the export of services, so as to create a powerful and unique "Served from India" brand, which would be instantly recognized and respected the world over. Paragraph 3.12.2 of the Foreign Trade Policy stipulates the service providers, who are eligible to avail the benefit of the said scheme. As per paragraph 3.12.2 of the Foreign Trade Policy, the Indian service providers of the services, listed in Appendix 41 of the Handbook of Procedures, who have foreign exchange earnings of atleast Rs.10 lakhs in the current financial year, are eligible for duty credit scrip.

5 It has been further stated that in terms of the "Served from India Scheme", notified under the Foreign Trade Policy, the petitioner had submitted an application, dated 12.2.2014, for the services rendered, during the period 2012-13. The said application filed by the petitioner had been rejected initially, vide letter, dated 17.4.2014, issued by the second respondent,

quoting Paragraph 3.6.1(b) of the Handbook of Procedures. Paragraph 3.6.1(b) of the Handbook of Procedures states that the payment, for services received from EEFC account, is not entitled to be taken into consideration for the calculation of the entitlement under "Served from India Scheme". While so, the petitioner had submitted a representation to the Directorate General of Foreign Trade (DGFT), New Delhi. The office of the DGFT, New Delhi, vide letter dated 31.3.2015, had advised the petitioner to bring the documents, submitted before it, to the notice of the second respondent, for reconsideration. Accordingly, the petitioner had made a representation to the respondents, on 13.4.2015, along with the certificates, dated 30.1.2014 and 27.1.2014, issued by the HSBC Bank and Andhra Bank, respectively, stating that the remittances received were not from EEFC accounts, and the copies of certifications of foreign inward remittances.

6 It has been further stated that the petitioner had received a letter, dated 12.8.2015, from the second respondent, asking the petitioner to clarify as to whether it had received the foreign exchange, for the services exclusively rendered by it. The petitioner had also been informed that the objection, regarding the remittances credited in EEFC accounts, were not settled by the audit, in a similar case, pertaining to some other service provider.

7 It has been stated that in terms of the "Served from India Scheme", notified under the Foreign Trade Policy, the petitioner had submitted applications, dated 13.10.2015, for the services rendered, during the periods 2013-14 and 2014-15. The said applications filed by the petitioner had been rejected by the impugned orders, dated 29.10.2015, issued by the second respondent, stating as follows :

> "Your Application has been rejected due to following reasons:
> 1.Claim included for foreign rebate, freight discount, peak season surcharge and services tax - These are not classified as services.
> 2.Foreign exchange earnings credited in to your EEFC Account.
> Your case stands closed."

8 The learned counsel appearing on behalf of the petitioner has submitted that the second respondent had rejected the applications of the petitioner, dated 13.10.2015, by a cryptic order, without giving proper reasons, for rejecting the claim of the petitioner. He had further stated that no opportunity of hearing had been given to the petitioner before

the impugned orders had been passed by the second respondent. It has been stated that the first respondent is the competent authority to consider the application submitted by the petitioner. Therefore, it has been prayed that this Court may be pleased to set aside the impugned orders of the second respondent, dated 29.10.2015, and to direct the first respondent to pass a reasoned order, considering the applications of the petitioner, dated 13.10.2015, for the years 2013-14 and 2014-15, after giving an opportunity of hearing to the petitioner.

9 The learned counsel appearing on behalf of the respondents had no objection for this Court passing such an order.

10 In such circumstances, this Court finds it appropriate to set aside the impugned orders of the second respondent, dated 29.10.2015, and to direct the first respondent to consider the applications of the petitioner, dated 13.10.2015, for the grant of benefits, under the "Served from India Scheme", as claimed by the petitioner, for the years 2013-14 and 2014-15, and pass reasoned orders thereon, after giving an opportunity of hearing to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner shall furnish a copy of the applications, dated 13.10.2015, to the first respondent, along with a copy of this order. However, it is made clear that this Court has not expressed any opinion on the merits of the matter, by passing this order. Both the writ petitions are allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Zonal Joint Director General of Foreign Trade,
Shastri Bhawan Annexe,
26, Haddows Road,
Nungambakkam,
Chennai-600 006.

2.The Foreign Trade Development Officer,
Shastri Bhawan Annexe,
26, Haddows Road,
Nungambakkam, Chennai-600 006.

W.P.Nos.36771 and
36772 of 2015

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