IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.39605 of 2015
and
M.P.No.1 of 2015

M/s.Zaida Clothing
No.38, 4th Seaward Road
Valmiki Nagar, Tiruvanmiyur
Chennai - 600 041
by its Proprietrix
Smt Annapoorani Hariharan .. Petitioner

..Vs..

1.Additional Director General of Foreign Trade
Government of India
Ministry of Commerce and Industry
Directorate of Foreign Trade
Udyog Bhavan, New Delhi.

2.The Joint Director General of Foreign Trade
Ministry of Commerce
Additional Director General of Foreign Trade
4th & 5th Floor, Shastri Bhavan Annexe
No.26, Haddows Road
Chennai - 600 006.

3.The Commissioner of Customs
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 a Writ of Certiorarified Mandamus, calling for the records in and connected with Order-in-Appeal F.No.I(44)/DQR/ECA/AM14/1157 dated 24.06.2015, passed by the 1st respondent herein denying the benefit of Public Notice No.22(RE-2013)/2009-2014, New Delhi, dated 12.08.2013 and Policy Circular No.8/2009-2014(RE2013) dated 25.10.2013, quash the same and consequently direct the respondents to reconsider the matter afresh taking note of the factum of payment of duty and interest as sufficient compliance for extending the benefit of the said Public Notice and policy circular.

For Petitioner : Mr.B.Satish Sundar

For Respondents: Mr.V.Venkatesan, S.C.G.S.C, for R1 and R2

Mr.V.Sundareswaran, for R3

ORDER

Heard Mr.B.Satish Sundar, learned counsel for the petitioner, Mr.V.Venkatesan, learned Senior Central Government Standing Counsel appearing for the respondents 1 and 2 and Mr.V.Sundareswaran, learned counsel appearing for 3rd respondent and with the consent of either side, the writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition challenging the order passed by the first respondent namely, Additional Director General of Foreign Trade, New Delhi dated 24.06.2015. This order is an order passed exercising jurisdiction as an appellate authority over and above the order in original dated 06.02.2013, passed by the second respondent imposing physical penalty on the petitioner to the tune of Rs.15 lakhs on the ground that the petitioner has failed to fulfill the conditions of license granted by virtue of advance authorization No.0410078753 dated 21.02.2006. Before the appellate authority, namely the first respondent, the petitioner though did not appear in person submitted a detailed written submissions stating that the entire duty amount was cleared by means of Bank Guarantee executed in favour of the Customs authorities and the petitioner had requested the Custom authorities to release the Bank Guarantee and set off the same against the duty liability so as to enable the petitioner to take advantage of the Public Notice No.22, dated 12.08.2013 which has provided an amnesty with a cut off date of 31.03.2014.

3.In fact in respect of two other advance licenses issued to the petitioner, the petitioner made such a request and such request was accepted and on appeal, the appellate authority namely the first respondent has closed the proceedings by order dated 09.06.2015. However, in the instant case, the Bank Guarantee having not been encashed and the amount having not been appropriated towards the duty, the petitioner was not extended the benefit of amnesty, though the petitioner had paid the duty liability which was remaining to be paid i.e., a sum of Rs.2,50,000/- by Demand Draft dated 30.06.2014, well beyond the cut off date fixed in the Public Notice No.22, dated 12.08.2013.

4.The counter affidavit filed by the third respondent shows that the petitioner has sent a letter dated 28.03.2014 to the Commissioner of Customs requesting the Bank Guarantee No.2/2006 which is available with them to be encashed and adjusted towards the balance customs duty payable i.e., Rs.2,18,806/-. In fact, the Bank Guarantee was to the tune of Rs.2,60,000/-. However, this aspect of the matter appears to have not been placed before the first respondent with the appeal was heard.

5.Therefore, this Court is of the view that the matter should be remanded to the first respondent to consider this fact and to examine the bonafide of the petitioner to see as to whether the benefit of amnesty provided under the Public Notice No.22, dated 12.08.2013 could be extended to the petitioner. This direction and observation is issued in the light of the fact that the petitioner had requested the customs to encash the Bank Guarantee by letter dated 28.03.2014 which is well before the cut off date i.e., 31.03.2014.

6.In the counter affidavit filed by the second respondent it has been stated that to avail the benefit of Public Notice No.22, dated 12.08.2013, the last date for payment was 31.03.2014. There can be no quarrel to this position and in fact, the learned counsel for the third respondent also submitted that the benefit of the Public Notice cannot be extended beyond the cut off date. This position also cannot be disputed.

7.Nevertheless, in the facts of the present case, the petitioner did exercise his option and made request to the customs to encash his Bank Guarantee which was given for a sum of Rs.2,60,000/- and adjust the duty liability of Rs.2,18,806/- and if such adjustment had been made by encashing the Bank Guarantee, the petitioner would have had the benefit of Public Notice No.22, dated 12.08.2013. Therefore, the bonafides of the petitioner may be reconsidered by the first respondent, after inviting appropriate report from the third respondent in this regard.

8.In the light of the above, the writ petition is allowed and the impugned order is quashed. The matter is remanded to the first respondent to ascertain the bonafides of the petitioner in the facts set out in the preceding paragraphs, call for report from the third respondent and thereafter, proceed to decide the matter in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.Additional Director General of Foreign Trade
Government of India
Ministry of Commerce and Industry
Directorate of Foreign Trade
Udyog Bhavan, New Delhi.

2.The Joint Director General of Foreign Trade
Ministry of Commerce
Additional Director General of Foreign Trade
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3.The Commissioner of Customs
Customs House
No.60, Rajaji Salai
Chennai - 600 001.

+1cc to Mr.B.SathishSundar, Advocate Sr.37829
+1cc to Mr.V.Venkatesan, Advocate Sr.37832
+1cc to Mr.V.Sundareshwaran, Advocate Sr.38132

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and
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svi[co]
srg 17/08/2016