

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.Nos.1067 and 1068 of 2016
and

C.M.P.Nos.13832 to 13834 of 2016

M/s.Sri Amman Chemicals
9/22 C.B.Complex
New Madurai Bye Pass Road
L.N.S. (PO) Karur 639 002
Rep by its Partner P.Kumaresan

Appellant

Versus

- 1 The Chief Controller of Explosives
Petroleum & Explosives Safety Organization
A Block 5th Floor
CGO Complex Seminary Hills
Nagpur Maharashtra 440 006
 - 2 The Joint Controller of Explosives
Petroleum & Explosives Safety Organization
A & D Wing Block 1-8 II Floor
Shastri Bhawan 26 Haddows Road
Nungambakkam Chennai 600 034
 - 3 The Commissioner of Customs
Chennai III Customs Commissionerate
Custom House 60 Rajaji Salai
Chennai 600 001
 - 4 The Deputy Commissioner of
Customs (SIIB)
Custom House 60 Rajaji Salai
Chennai 600 001
- ... Respondents

W.P.No.20826 of 2016

This Writ Petition is filed Under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent connected

with impugned order No. P-5 (AN) Ports/2014 (A1743) dt 19.8.2015 and quash the same and consequently direct the 1st respondent to issue the P5 license to the petitioner firm viz. Sri Amman Chemicals Karur.

W.P.No.20827 of 2016

This Writ Petition is filed Under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent connected with impugned order No. A/HQ/TN/P3/18 (A1100) dt 20.5.2016 and quash the same.

For appellant : Mr.V.T.Gopalan, Senior Counsel for
Mr.S.Baskaran in both the Writ Appeals

For RR1 & 2 : Mr.G.Rajagoplan,
Additional Solicitor General of India
assisted by Mr.B.Rabu Manohar
Senior Central Govt. Standing Counsel
in both the Writ Appeals

For RR3 & 4 : Mr.T.Pramodkumar Chopda
Senior Standing Counsel for Customs
in both the Writ appeals

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

These appeals are filed by the writ petitioner, against the order of of dismissal dated 11.8.2016 passed by the learned Single Judge in Writ Petition Nos.20826 and 20827 of 2016.

2. It appears that the petitioner/appellant is a P3 licence holder dated 3.12.2014, for dealing with Ammonium Nitrate and they had applied for P5 licence, on 5.8.2015, for importing Ammonium Nitrate, but, the same was rejected by the first respondent, by order dated 19.8.2015, while the P3 licence issued by the first respondent was also suspended by the second respondent, by his order dated 20.5.2016, as an interim measure. In the meanwhile, it appears that the petitioner/appellant had placed purchase order dated 6.5.2015 and the goods were consigned by the overseas supplier by their Proforma Invoice dated 23.7.2015 and the goods are now seized by the authorities and withheld at Chennai Port. Aggrieved against the rejection of P5 licence and suspension of P3 licence as an interim measure, the petitioner/appellant filed the writ petitions. Aggrieved against the dismissal of both the writ petitions, the present appeals have been filed.

3. The apprehension expressed by the petitioner/appellant is that before amendment of the Rules, viz., Ammonium Nitrate Rules 2012, there was no prohibition for import of such materials, however, taking various contentions, the respondents suspended the P3 licence of the petitioner and pending enquiry a show cause notice is also issued by the authority which is bad in law and against the provisions of law and the learned Single Judge has not considered these aspects and therefore, they are in appeal before this court.

4. It appears that P3 licence has been obtained by the petitioner/appellant to deal with Ammonium Nitrate and other such chemicals either for the purpose of agriculture or for quarrying, etc. As per the submission of the learned Senior Counsel appearing for the petitioner/appellant, it appears that wayback in 2012, the Rules came into force which was later amended on 21.6.2013 and thereafter the licence granted to the petitioner/appellant was suspended on 20.5.2016. In the interregnum, there is an import of huge quantity of Ammonium Nitrate which is now lying in the Chennai Port.

5. In the circumstances, a show cause notice is also shown to have been issued to the petitioner/appellant as per the provisions of Section 6(#) of Explosives Act, 1884 and Rule 42 of Ammonium Nitrate Rules, 2012. As against the show cause notice issued by the second respondent, an appeal lies to the Chief Controller of Explosives.

6. According to the learned Senior Counsel for the appellant, there is no violation as such pointed out and they were dealing with the goods based on the licence granted to them prior to the Rules coming into force.

7. Be that as it may, whether the petitioner/appellant violated the norms of the Rules, etc. or whether they are entitled to seek permission for moving the goods which are now lying in the Chennai Port etc., all these things would be subject matters to be considered by the appropriate authority viz., the Chief Controller of Explosives, who has got better experience as to the violation of the petitioner/appellant, if any, and after affording an opportunity to the petitioner/appellant, he may come to the right conclusion as per

the Rules. It is also submitted that the goods imported by the petitioner/appellant is lying in Chennai Port on the ground that the petitioner/appellant is bereft of licence and it requires immediate attention.

8. In this regard, the petitioner/appellant shall file an application, within a period of one week from the date of receipt of copy of this order and on receipt of such application, the same shall be decided by the Chief Controller of Explosives, after affording an opportunity to the petitioner/appellant, within a period of fifteen days thereafter. So far as the rejection of application seeking P5 licence for importing the goods is concerned, the petitioner/appellant has got an appeal remedy before the Central Government. Therefore, it is for the petitioner/appellant to exhaust their appeal remedy, if they so desire and on filing of any appeal, it shall be decided by the appellate authority expeditiously, after giving an opportunity to the petitioner/appellant. The application referred to above and the appeal to be filed by the petitioner/appellant shall be decided without being influenced by the view expressed by the learned Single Judge. With the above observation, the writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssk.

To:

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4 The Deputy Commissioner of
Customs (SIIB)
Custom House 60 Rajaji Salai
Chennai 600 001

+4cc to Mr.Baskaran, Advoate SR.59135,59136
+1cc to Mr.B.Rabu Manohar, Advocate SR.59083
+1cc to Mr.T.Pramodkumr Chopda, Advocate sr.59132

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srg 26/10/2016



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