

In the High Court of Judicature at Madras

Dated : 02.12.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41476 of 2016 & WMP.Nos.35451 & 35452 of 2016

M/s.The Southern Pressure Castings,
rep.by its Senior Officer (Admn.)
S.Vasanth Kumari, Chennai-7.

...Petitioner

Vs

1.The Assistant Commissioner of
Customs (EPCG), Office of the
Commissioner of Customs,
Rajaji Salai, Chennai-1.

2.The Commissioner of Customs
(Appeals), Rajaji Salai, Chennai-1.
Custom House

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of the 1st respondent dated 21.2.2011 in Order in Original No.14611/2011 as confirmed in Order in Appeal No.660/ 2013 dated 22.4.2013 by the Commissioner of Customs (Appeals), quash the same and consequently direct the respondents to release the bank guarantee given by the petitioner firm.

For Petitioner : Mr.Mohammed Ismail
For Respondent : Mr.Rabu Manohar, SPC

ORDER

Mr.Rabu Manohar, learned Senior Standing Counsel appears for the Revenue. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks to quash the Order-in-Original dated 21.2.2011 as confirmed in Order-in-Appeal dated 22.4.2013 and to direct the respondent to release the bank guarantee given by the petitioner firm.

3. The petitioner imported certain machinery under the

Export Promotion Capital Goods Scheme (hereinafter referred to as the EPCG Scheme) in terms of Custom Notification No.44/95, in and by which, the petitioner was required to submit documents to show that they completed export obligation by producing export obligation discharge certificate, which has to be issued by the Joint Director General of Foreign Trade.

4. Admittedly, the petitioner could not produce the certificate within the time stipulated, which resulted in a show cause notice calling upon the petitioner to pay the duty, which was forgone on account of the exemption notification and it ultimately resulted in passing of the Order-in-Original dated 21.2.2011 holding that the petitioner breached the conditions of the notification and a demand of duty to the tune of Rs.9,50,000/- along with applicable interest, was issued. The petitioner's appeal was rejected confirming the Order-in-Original.

5. The petitioner again preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, which was taken on file and when the matter was pending, the petitioner received relevant certificates from the Joint Director General of Foreign Trade. Therefore, they filed an application before the Tribunal on 29.5.2014 to withdraw the appeal. The Tribunal, by order dated 27.6.2014, dismissed the appeal and the stay application as withdrawn. After withdrawal of the appeal before the Tribunal, the petitioner approached the first respondent along with export obligation discharge certificate and requested for release of the bank guarantee. On such request being made, the first respondent passed the impugned order stating that the Order-in-Original is very much in force and that therefore, their request cannot be considered.

6. Therefore, the petitioner again went before the Tribunal by filing an application seeking to revoke the order dismissing the appeal as withdrawn and to restore the appeal, so that appropriate direction can be given. The Tribunal was of the view that at the time of withdrawal, the petitioner did not reserve any liberty to reagitate the matter and therefore, it cannot entertain the application apart from the fact that it has become functus officio. Hence, the petitioner is before this Court challenging the Order-in-Original as well as the Order-in-Appeal.

7. After hearing the parties and also perusing the instructions given by the Department to the learned Senior Standing Counsel, it is seen that the petitioner is a victim of technicalities. It may be true that on the date when the first respondent adjudicated the show cause notice, the petitioner did not have the requisite certificates. However, the certificates

have been issued by the Competent Authority. But, at this stage of the matter, this Court is not inclined to examine as to what is the cause for the delay. Nevertheless, the certificates are in the possession of the petitioner. Therefore, the petitioner's case should be considered and the certificates should be examined and if they are found to be proper and valid, necessary relief as a consequence thereof should be granted. This is so because the first respondent has also not rejected the petitioner's claim on merits. But, what has prevented the first respondent is the fact that the Order-in-Original as well as the Order-in-Appeal are in force as on date and the fact that the petitioner had withdrawn the appeal before the Tribunal. In the light of the above, to ensure that the petitioner's case is considered in proper perspective, the orders impugned are required to be set aside.

8. In view of the peculiar facts and circumstances of the case, the writ petition is allowed, the impugned orders are set aside and the matter is remitted back to the first respondent to take into consideration the export obligation discharge certificate produced by the petitioner, if the same is in order and proceed to order for release of bank guarantee. The above exercise shall be completed within a period of six weeks from the date, on which, the petitioner approaches the first respondent along with the original certificate. It is made clear that this order shall not be shown as a precedent in future, in any other case. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Assistant Commissioner of Customs (EPCG), Office of the Commissioner of Customs, Rajaji Salai, Chennai-1.
- 2.The Commissioner of Customs (Appeals), Rajaji Salai, Chennai-.
o/o The Commissioner of Customs Custom House,
Rajaji Salai, Chennai 600 001

+1cc to Mr.Mohamed Ismail, Advocate, S.R.No.71721

+1cc to Mr.Rabu Monohar, Advocate, S.R.No.71502

mg (CO)

md(20/12/2016)

WP.No.41476 of 2016 & WMP.
Nos.35451 & 35452 of 2016