HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MRS JUSTICE ANIS

Writ Petition No.20579 of 2016

Order: (per V.Ramasubramanian, J.)

On the ground that the petitioner failed to fulfill their export obligation under an Advance Authorization Scheme, the petitioner was slapped with an Order-in-Original dated 11-3-2016, demanding the differential duty to the tune of Rs.13,67,11,287/- together with penalty of Rs.70 lakhs. An order for confiscation, together with an option to redeem was also passed by the said Order-in-Original.

2. Without taking recourse to the statutory appellate remedy, the petitioner has come up with the above writ petition challenging the Order-in-Original on the ground that their application dated 16-3-2015 to the Director General of Foreign Trade (DGFT), for the extension of the duration of advance licence is pending with the competent authority and that once the extension is granted, the Order-in-Original would automatically go.

3. Heard Mr. C.V. Narasimham, learned counsel for the petitioner, Mr. B.Narayana Reddy, learned Assistant Solicitor General for the respondents 1 and 2, and Mr. B.Narasimha Sarma, learned counsel for the 3rd respondent.

4. The main grievance of the petitioner is that the period stipulated under the advance licence for the fulfillment of the export obligation, is extendable and that during the pendency of their application for extension of the period, the 3rd respondent could not have imposed the duty and fine upon it. The very obligation is for the export of certain quantity of sugars, during the period stipulated in the licence or during such extended period, as may be stipulated.

Therefore, the contention of the learned counsel for the petitioner is that when the very obligation, imposed by the licence, could be fulfilled either during the period originally prescribed or during the extended period, it was not fair on the part of the 3rd respondent to slap a duty, without waiting for the disposal of their representation for extension of the period by the 2nd respondent.

5. We have carefully considered the above submissions.

6. As against the Order-in-Original, the petitioner has a statutory alternative remedy of appeal. As rightly pointed out by the learned counsel for the 3rd respondent, the period for fulfillment of export obligation, expired in December, 2014.
The very application for extension was submitted on 16-3-2015.
In the meantime, the petitioner also undertook a travel to the Board for Industrial and Financial Reconstruction (BIFR) to the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

7. Moreover, there is no obligation on the part of the 3rd respondent to wait perennially for the disposal of an application for extension of time by the DGFT. As a matter of fact, the Order-in-Original was passed after the expiry of one year of the application for extension made by the petitioner with the 2nd respondent. Therefore, insofar as the challenge to the Order-in-Original is concerned, it is liable to fail, on account of availability of alternative remedy.

8. However, insofar as the first portion of the relief is concerned, the 2nd respondent can be directed to dispose of the representation in accordance with law. Therefore, the writ petition is disposed of directing the 2nd respondent to consider the representation of the petitioner dated 16-3-2015 and pass orders in accordance with law within a period of 4 (four) weeks. However, the prayer for setting aside

the Order-in-Original dated 11-3-2016 is rejected and liberty is given to the petitioner to work out their remedies as against the said order in accordance with law.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ANIS, J.

08th August, 2016.
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AND
HON'BLE MRS JUSTICE ANIS

Writ Petition No.20579 of 2016
(Order of the Division Bench
delivered by VRS, J.)

08th August, 2016.
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