IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.08.2017

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The Hon'ble Mr.Justice Nooty Rama Mohanarao
and
The Hon'ble Mr. Justice M.Dhandapani

W.A.Nos.354 to 356 of 2017
and
C.M.P.Nos.5429 to 5431 of 2017

1. M/s. Golden Tulip Fashions,
rep. by its Partner,
Shri M.Aravind.
..Appellant in W.A.No.354 of 2017

2. Shri M. Aravind
Partner of M/s. Golden
Tulip Fashions.
.Appellant in W.A.No.355 of 2017

3. Smt.M. Sangeetha
Partner of M/s.
Golden Tulip Fashions.
..Appellant in W.A.No.356 of 2017

Vs.

1. The Joint Director General of Foreign Trade,
1544, India Life Building (Annexe) 1st Floor,
Trichy Road, Coimbatore - 641 018.

2. The Deputy Director General of Foreign Trade,
1544, India Life Building (Annexe) 1st Floor,
Trichy Road, Coimbatore - 641 018.

...Respondents in all W.As.

Common Prayer

Writ Appeals, filed under Clause 15 of Letters Patent, praying to set aside the order, dated 03.11.2016, passed in W.P.Nos.38172 to 38174 of 2016, dated 03.11.2016.

For Appellants : Mr.Hari Radhakrishnan

For Respondents : Mr.Su.Srinivasan
Assistant Solicitor General of India

COMMON O R D E R

(Order of the Court was delivered by Nooty Rama Mohanarao,J.)

These Writ Appeals are directed against the judgment and order, rendered in W.P.Nos.38172 to 38174 of 2016, dated 03.11.2016, by the learned Single Judge, dismissing the Writ Petitions, while preserving liberty to approach the Appellate Authority against the impugned orders.

2. It would be appropriate to notice that the afore mentioned Writ Petitions have been preferred by the writ petitioners aggrieved by the orders passed by the Deputy Director General of Foreign Trade, Coimbatore, in Order-in-Original, dated 02.08.2016.

3. The writ petitioners have availed duty concession, subject to fulfilling the corresponding export obligations. However, in spite of granting extension of time for fulfilling the export obligations, the writ petitioner/Firm has failed to discharge those obligations satisfactorily. Consequently, the respondent had proceeded against the writ petitioner/Firm.

4. As we have noticed supra, the Order-in-Original has been passed by the Deputy Director General of Foreign Trade, Coimbatore, on 02.08.2016. It was clearly brought out therein that, the petitioner/Firm had obtained EPCG Licence on 01.09.2005, for a sum of Rs.10,73,084/-, from the Office of the Directorate General of Foreign Trade, Coimbatore, under EPCG Scheme for import of capital goods with an obligation to export of

ready made garments for an Freight on Board (FOB) value of US Dollars of Rs.1,96,446/- representing eight times, the duty exemption availed within a period of eight years. The petitioner-Firm has failed to discharge the said obligation, and it could not export any material. Consequently, a demand show cause notice, under Section 14 read with Section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992 (henceforth referred to as 'the Act') has been drawn. It is, in pursuance of this show cause notice, the order-in-original came to be passed on 02.08.2016. The learned Single Judge has noticed that, under Section 15 of the Act, an Appeal would lie against the Order-in-Original, and hence, the writ petitioner/Firm has an effective and efficacious alternative remedy to prefer Appeal, and without availing the said remedy, the Writ Petitions have been instituted.

5. It is contended before us by Shri.Hari Radhakrishnan, the learned counsel appearing for the appellants that, the availability of alternate remedy is no bar to quash the impugned order, particularly, when principles of natural justice have not been observed by the Authority, who determined the issue. In support of his plea, the learned counsel has drawn our attention to the show cause notice, dated 31.12.2013, which has been

placed at page No.6 of the paper book filed accompanying the Writ Appeals. The said show cause notice, which is a demand-cum-show cause notice, drawn under Section 14 read with 11 (2) of the Act is, in fact, drawn by the Joint Director General of Foreign Trade. Shri.M.Gopinath, the then Joint Director General of Foreign Trade, at Coimbatore, signed the said show cause notice, whereas, the order-in-original, dated 02.08.2016, has been passed by the Deputy Director General of Foreign Trade, Coimbatore, and it is in fact, signed by Shri. D. Sridhar, who was holding the Office of the Deputy Director General of Foreign Trade, Coimbatore. It is, therefore, contended before us that the show cause notice has been drawn by a Superior Officer, viz., the Joint Director General of Foreign Trade, whereas, the order-in-original has been passed by the inferior Agency, called 'Deputy Director General of Foreign Trade'.

6. Thus, there is a clear violation of principles of natural justice. In normal circumstances, we would have set aside the order-in-original and remitted the matter back for consideration afresh by the Joint Director General of Foreign Trade, who drew the show cause notice, dated 31.12.2013, for the simple reason that, a Superior Agency cannot initiate

quasi-judicial proceedings, and an inferior Agency cannot finalize the same. The provisional conclusion arrived at by a particular Authority must necessarily be considered, when responded to by the same Authority. The inferior Authority cannot consider the explanation and make up his mind for and behalf of his superior agency. But, however, Shri. Su. Srinivasan, the learned Assistant Solicitor General of India for the respondents has pointed out that, duty exemption has been availed, as long back as on 01.09.2005, in a huge sum of Rs.10,00,000/-, and the writ petitioner/Firm has failed to discharge the export obligation, subject to which, duty exemption has been availed. Further, exercise of powers conferred under Section 13 of the Act and in supersession of the earlier notification in S.O.24 (E) dated 20.01.1999, as amended by Notification S.O.194(E), dated 06.03.2000 and Notification S.O.1534(E) dated 14.09.2006, except as respects things done or omitted to be done before that super session, the Central Government authorized the Officers specified in Column 2 of the table appended for the purpose of exercising powers under Section 13 read with Section 11, subject to the limits specified against such Officers in the corresponding column III of the said table.

7. Therefore, the learned Standing Counsel for the Central Government would submit that, as per the latest notification, dated 17.04.2009, it is the Deputy Director General of Foreign Trade, who is competent Authority to deal with the goods of value of Rupees 10 Crore. Since, in the instant case, the value of the goods being less than Rupees 10 crore, the Deputy Director General of Foreign Trade is empowered to pass the order-in-original. We have, absolutely, no difficulty to deal with this contention, inasmuch as, this notification has been issued by the Central Government, in exercise of power conferred on it, under Section 13 of the Act, on 17.04.2009. It is, thereafter, the Joint Director General of Foreign Trade, Coimbatore, drew the show cause notice, dated 31.12.2013. He, being superior Authority than the Deputy Director General, it may not be erroneous on his part to draw such a show cause notice. But, however, if he had finalized the proceedings and passed order-in-original, perhaps, no exception could have been drawn and the notification, dated 17.04.2009, would not have come in his way, to finalize the proceedings, he being a superior Authority than the Deputy Director General of Foreign Trade. One authority cannot draw the show cause notice and another Authority

considers the objections and takes a final decision. It is wrong to do so. If one needs an Authority, on this aspect, useful reference can be made to the Constitution Bench Judgment, rendered by the Hon'ble Supreme Court, reported in **AIR 1959 SC 308** in the case of **(Gullapalli Nageswara Rao and others Vs. A.P. State Road Transport Corporation and another)** Therefore, we have no hesitation to set aside the order-in-original passed by the Deputy Director General of Foreign Trade, Coimbatore.

8. However, the matter does not stop there. The learned Assistant Solicitor General has drawn our attention to the fact that, so long as the exemption duty, which is availed has not been remitted, and the interest payable thereon is also not tendered, the obligation of the writ petitioner/Firm does not cease and it still continues liable to be proceeded under Section 11 of the Act. To neutralize this submission, the learned counsel for the appellant would submit that the duty together with the interest was paid. At that stage, the learned Assistant Solicitor General sought for time on the last occasion, when we heard this matter on 19.01.2017, to get necessary instructions and to obtain necessary details from the Commissioner of Customs, Chennai, to demonstrate that the duty

amount together with interest payable thereon, has been remitted to the treasury. Further, the learned counsel for the appellant has produced before us, a communication, dated 26.07.2017, issued by the Commissioner of Customs House, Chennai, addressing the Assistant Director General of Foreign Trade, informing him that the duty amount of Rs.10,73,084, together with the interest calculated thereon, at Rs.19,09,000/- has been remitted by the writ petitioner/Firm on 21.09.2016 and 13.07.2017, respectively, and also that, T.R. 6 Chellans have been drawn with regard to those payments bearing MCM.No.0091483, dated 22.09.2016 and MCM.No.0070820, dated 13.07.2017. The copy of that communication is taken on record, so was the communication, dated 17.04.2009.

9. We have now seen from the notification, dated 17.04.2009 that, it is the Foreign Trade Development Officer, who has been conferred power to deal with the goods upto the value of Rupees one crore. Therefore, it should be absolutely, open to any of the Assessing Officers, including the Joint Director General of Foreign Trade, to finally proceed against the writ petitioner duly taking into consideration the communication issued by the Commissioner of Customs, Chennai, dated 26.07.2017, evidencing payment

of duty and interest thereon.

10. Accordingly, these Writ Appeals stand disposed of, duly substituting the order passed by the learned Single Judge. No costs. Consequently, connected Miscellaneous Petitions are closed.

(N.R.R.J.,) (M.D.I.J.,)
04.08.2017

Index : Yes
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