

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.21634 and 21636 of 2017
and
W.M.P.Nos.22648, 22649, 22650 & 22651 of 2017

M/s. Sri Lakshmi Saraswathi Spintex Ltd.,
Represented by its Managing Director,
Mr. C.S.Aditya Praveen,
Having Office at: New No.9, Old No.8,
Crescent Road, Shenoy Nagar,
Chennai - 30 ... Petitioner in both W.Ps.

..vs..

1. Director General of Foreign Trade,
Policy Relaxation Committee,
Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi
 2. Additional Director General of Foreign Trade,
Ministry of Commerce and Industry,
Shastri Bhavan, 4th Floor, Annexe,
26 Haddows Road, Chennai - 6
 3. Assistant Director General of Foreign Trade,
Shastri Bhavan, 4th Floor, Annexe,
26 Haddows Road, Chennai - 6
 4. Deputy Commissioner of Customs,
O/o. Commissioner of Customs,
Ministry of Finance, Customs House,
No.60 Rajaji Salai, Chennai - 1
- ... Respondents in both W.Ps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent pertaining to File Nos.04/83/165/00922/AM15; 04/83/165/00648/AM15, both dated 29.05.2017 placing the petitioner company into denied entity list, quash the same as illegal, arbitrary and consequently, to direct the first respondent to consider the representations, dated 05.01.2015, 18.05.2017 and 27.07.2017; 11.06.2014, 08.10.2014, 18.05.2017 and 27.07.2017 and extend time granted vide Advanced

Authorization Nos.0410139033, dated 23.08.2012; 041013784, dated 04.07.2012, respectively, by another six months, in order to fulfill the Export Obligation.

For Petitioner in both W.Ps. : Mr. Adinarayana Rao
For R-1 to R-3 in W.P.No.21634/2017 : Mr. Venkatasamy Babu,
CGSC,
For R-1 to R-3 in W.P.No.21636/2017 : Mr. T.V.Krishnamachari,
SPCCG
For R-4 in both W.Ps. : Mrs. R.Hemalatha, SPC.,

C O M M O N O R D E R

Heard Mr.Adinarayana Rao, learned counsel appearing for the petitioner, Mr.Babu Rangasamy, learned CGSC, Mr.T.V.Krishnamachari, learned SPCGC and Mrs.R.Hemalatha, learned counsels, who accepts notice for the respective respondents, in both these petitions. With the consent of the respective learned counsels appearing for both sides, the writ petitions themselves are taken up for final disposal, at the admission stage itself.

2. The petitioner, in both these writ petitions, seeks for the issuance of a Writ of Certiorarified Mandamus to quash the communication sent by the third respondent, directing the petitioner to regularize the entire import to the Customs, as per para 4.49 of HBP 2015-2020, immediately, by placing the petitioner unit under DEL.

3. The petitioner was requested to remove the above said deficiency, within a period of thirty days from the date of issuance of the said order, otherwise, the petitioner's case will be treated as closed. The petitioner, while admitting that they failed to fulfill the export obligations within the time permitted, i.e., 31.03.2014, approached the respondents, by way of representations dated 11.06.2014, 08.10.2014, 05.01.2015, 18.05.2017 and 27.07.2017. The representation, dated 05.01.2015, does not specify the reasons, due to which, the petitioners were unable to fulfill their export obligations within the time permitted.

4. However, I find that, in the representation dated 18.05.2017, which has been given to the first respondent with the copy marked to the second respondent and the further representation dated 22.05.2017 given to the second respondent, on receipt of the show cause notice, dated 03.05.2017, it appears that certain reasons have been set-out by the petitioner, for not being able to fulfill the export obligations on or before 31.03.2014. However, the sufficiency or insufficiency of the reasons have to be tested by the second respondent and it is not open for this Court to consider the same, at this juncture.

5. Further, it is seen that the petitioner has given a representation to the first respondent on 27.07.2017, by enclosing certain Purchase Orders, which have been placed upon them for supply of garments and therefore, the petitioner's case is that, if sufficient time is granted, they would be in a position to fulfill their export obligations and the non-fulfillment is not due to any malafide reasons, but for circumstances beyond their control.

6. The learned counsel appearing for the petitioner, in both the writ petitions, pointed out that when the petitioner requested for adjournment of the adjudication of the show cause notice, by giving a representation dated 22.05.2017, their Manager was directed to make an endorsement in the very same representation stating as if the entire duty will be paid within 90 days, otherwise, the respondents / Department may take action under the Foreign Trade Development and Regulation Act; according to the petitioner, their Manager had no other option except to accede to the dictates of the Officer in the given facts and circumstances, but that cannot be an estoppel on the part of the petitioner in pursuing their claim for extension.

7. The submission made by the learned counsel for the petitioner, in this regard, is acceptable, as any endorsement made by an employee of the petitioner, while seeking for an adjournment of the adjudication of the show cause notice, cannot forfeit the right of the petitioner to plead for extension of time. Therefore, in all fairness, the second respondent should consider the petitioner's request for extension made vide various representations, referred to above.

8. Accordingly, there will be a direction to the second respondent to consider the petitioner's representation, dated 22.05.2017, seeking extension of time, examine the bonafides of the representations in accordance with the relevant regulations and pass a speaking order, on merits and in accordance with law, within a period of two months, from the date of receipt of a copy of this order. Till then, no coercive action shall be initiated against the petitioner.

9. With the above directions, these writ petitions stand disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. Director General of Foreign Trade,
Policy Relaxation Committee,
Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi
2. Additional Director General of Foreign Trade,
Ministry of Commerce and Industry,
Shastri Bhavan, 4th Floor, Annexe,
26 Haddows Road, Chennai - 6
3. Assistant Director General of Foreign Trade,
Shastri Bhavan, 4th Floor, Annexe,
26 Haddows Road, Chennai - 6
4. Deputy Commissioner of Customs,
O/o. Commissioner of Customs,
Ministry of Finance, Customs House,
No.60 Rajaji Salai, Chennai - 1

+2cc to Mr.R.Hemalatha, Advocate, S.R.No.58461,58762
+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.58718
+1cc to Mr.Krishnamachari, Advocate SR.No.58610
+2cc to the Government Pleader, S.R.No.58454,58456

Writ Petition Nos.21634 and 21636 of 2017
and W.M.P.Nos.22648, 22649, 22650 & 22651 of 2017

GN(08/09/2017)

सत्यमेव जयते

WEB COPY