

In the High Court of Judicature at Madras

Dated: 06.01.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.384 of 2017
and WMP No.415 of 2017

M/s.S.S.D.Oil Mills Company Limited
represented by its Director,
Shri.R.Deepan Dorai
Chennai - 600 083.

..... Petitioner

Vs.

1. The Assistant Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
Chennai - 600 006.
2. The Joint Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
Chennai - 600 006.
3. Additional Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
Chennai - 600 006.
4. Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No.02,
Maulana Azad Road, New Delhi - 110 011.
5. Export Promotion Capital Goods (EPCG) Committee
Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No.02,
Maulana Azad Road, New Delhi - 110 011.
6. The Deputy Commissioner of Customs (EPCG)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

..... Respondents

PETITION under Article 226 of The Constitution of India
praying for issuance of Writ of Certiorari to call for the
records pertaining to the impugned order-in-review in File

No.18/01/2016-17/ECA-I dated 18.05.2016 passed by the 4th respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam
For Respondents : Ms.Hema Muralikrishnan

O R D E R

1. Issue notice. Ms.Hema Muralikrishnan, accepts notice on behalf of the respondents.

2. With the consent of counsels for parties, the Writ Petition is taken up for hearing and final disposal.

3. Briefly, the petitioner is aggrieved by the fact that its representation, dated 26.08.2016, made to the EPCG Committee, has not been disposed of, as yet.

4. The petitioner has filed the instant Writ Petition, in the background of the following facts:

4.1. The petitioner was given an EPCG Licence to import capital goods. The issuance of the EPCG licence was, inter alia, subject to the petitioner being obliged to export Vanaspati and Margarine, of a value, equivalent to US\$ 602,064.27. This value was equivalent to five (5) times the CIF value of capital goods imported. The CIF value was calculated on FOB basis. The export obligation was required to be fulfilled within a period of eight (8) years.

4.2. Admittedly, the petitioner was able to fulfill only 30.19% of the total export obligation.

4.3. To be noted, the petitioner was issued the EPCG licence on 12.09.2002. Therefore, the eight (8) year period would have come to an end, in or about, 12.09.2010.

4.4. Notably, a change in the policy was brought about, whereby, in such like cases, the Government of India, granted permission to fulfill the export obligation by taking into account export value of alternate products, which were capable of being manufactured or produced by the use of capital goods imported under the EPCG licence.

5. According to the petitioner, this change in policy took place via notification dated 28.01.2004.

5.1. Furthermore, the petitioner says that, the principal reason, that the export obligation could not be fulfilled in the

first instance, was on account of the ban on export of edible oil imposed by the Government of India vide notifications dated 17.03.2008 and 04.09.2009.

6. It is because of the failure on the part of the petitioner to fulfill the export obligation, that a show cause notice was issued, which was finally adjudicated upon vide order-in-original dated 16.01.2014.

6.1. Against the said order, the matter was carried in appeal, which was rejected vide order dated 11.02.2016. The petitioner's review of the order-in-appeal was also rejected vide order dated 18.5.2016.

6.2. The petitioner, however, pursued its cause by making a representation to respondent No.2 via communication dated 06.07.2016. The petitioner's representation was disposed of by respondent No.2 vide order dated 28.07.2016. Respondent No.2 indicated to the petitioner, via this order, that, while the order dated 18.05.2016 could not be reviewed, it could file a representation with the EPCG Committee for relaxation of policy norms.

7. It is, in this background, the petitioner has filed a representation dated 26.08.2016, which, as indicated above, is pending consideration with the EPCG Committee.

8. Thus, having regard to the aforesaid facts and circumstances, I am inclined to direct the EPCG Committee to consider and dispose of the representation of the petitioner dated 26.08.2016, by way of a speaking order.

8.1. It is ordered accordingly.

8.2. The EPCG Committee shall, in this behalf, afford a personal hearing to the authorised representative of the petitioner, by issuing a written notice to the petitioner, indicating the date, time and venue of the hearing.

8.3. Pending the disposal of the representation by the EPCG Committee and for a further period of four (4) weeks, no coercive measures will be taken against the petitioner.

9. The Writ Petition is disposed of in the aforementioned terms. 9.1. It is made clear that the disposal of the Writ Petition will not come in the way of the petitioner challenging the impugned order, i.e., 18.05.2016.

9.2. Liberty, in that behalf, is granted to the petitioner, which is, to take recourse to an appropriate remedy, albeit, in accordance with law.

10. Resultantly, the connected Miscellaneous Petition stands closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
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+3cc to Mr.Hariradhakrishnan, Advocate, S.R.No.1920,1921,1922
+3cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.1701,1702,2144

KS(CO)
RS(15/02/2017)

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