In the High Court of Judicature at Madras

Dated : 22.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25139 and 25140 of 2017
& W.M.P.Nos.26573 to 26576 of 2017

M/s.Suriya Garments, rep.
by its Partner Mr.R.Kumar,
Tirupur-641 601. ...Petitioner in both Wps

Vs

1.The Joint Director General of
Foreign Trade, Coimbatore-18.

2.The Zonal Additional Director
General of Foreign Trade,
Shastri Bhawan, No.26,
Haddows Road, Chennai-6.

3.The Assistant Commissioner of
Customs (Group-7),
Custom House, No.60, Rajaji
Salai, Chennai - 1. ...Respondents in both WPs

PETITIONS 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 1st respondent culminating in the issue of the Orders-in-Original dated 16.9.2008 from File Nos.32/80/40/00071/AM 04 and 32/80/40/00144/AM 04, quash the same and direct the 1st respondent to consider the documents filed by the petitioner firm along with their letter dated 25.9.2015 for issue of Redemption/Discharge Certificate.

For Petitioner : Mr.S.Murugappan

For Respondents 1 & 2 : Mr.B.Rabu Manohar, SPC

For Respondent 3 : Mr.S.Rajasekar. SPC

COMMON ORDER

Heard Mr.S.Murugappan, learned counsel for the petitioner, Mr.B.Rabu Manohar, learned Senior Panel counsel accepting notice for respondents 1 and 2 and Mr.S.Rajasekar, learned Senior Panel counsel accepting notice for the third respondent. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner in these writ petitions have challenged the orders passed by the first respondent dated 16.9.2008, levying penalty on the petitioner for non fulfillment of the export obligations, which orders were confirmed in appeals by the second respondent by orders dated 28.7.2017. The orders in the appeals are not on merits, but on the ground that the petitioner's appeal petitions were filed beyond the period of limitation (condonable period).

3. The Orders in Original were passed on 16.9.2008. The petitioner's case is that on account of the shifting of the Office premises, they had no notice of penalty proceedings, as a result of which, the Original Authority namely the first respondent confirmed the proposals in this notices and levied penalty for non fulfillment of export obligations.

4. Later, when the petitioner came to know about it, they submitted two application to the first respondent stating that they have not received the copies of the adjudication orders and requesting the copies to be furnished. This request was complied with and the Office of the first respondent, by letters dated 28.8.2015, furnished the copies of the adjudication orders dated 16.9.2008.

5. In the mean time, the petitioner had received the requisite certificates from their bankers and accordingly, submitted application to the first respondent on 25.9.2015, enclosing the copies of the bank realization certificates. These applications are pending before the first respondent and no orders have been passed so far. It appears that, the filing of the applications for redemption along with the bank realization certificates was not brought to the notice of the second respondent. Consequently, the second respondent took into consideration the date of the Orders in Original and dismissed the appeal petitions as being time barred.

6. The petitioner's contention is that limitation should be calculated only from the date, on which, the petitioner received copies of the adjudication orders from the office of the first respondent i.e. 28.8.2015 and if that date is reckoned, the petitioner's appeal petitions filed on 28.9.2015 are well within the period of limitation. Be that as it may, I find that the petitioner has submitted the applications for redemption along with the bank realization certificates to the first respondent on 25.9.2015. If such, is the case, it would be appropriate for

the first respondent to consider the applications regardless of the fact that an Orders in original, levying penalty were passed in the year 2008.

7. This is so, because the scheme has been evolved by the Central Government under the provisions of Foreign Trade (Development and Regulation) Act, 1992 for the benefit of exporters and to promote exports. Thus, if the petitioner has fulfilled the export obligations and produced necessary documents to prove the same, nothing prevented the first respondent from taking into consideration such applications and examine as to whether the petitioner has fulfilled their obligations. Therefore, this Court is of the view that the first respondent should be directed to consider the petitioner's applications dated 25.9.2015 claiming redemption. In the mean time, the impugned orders should not be give an effect or otherwise, the petitioner would be put to prejudice.

8. Accordingly, these writ petitions are disposed of and the impugned orders shall be kept in abeyance and the first respondent is directed to consider the applications dated 25.9.2015 for redemption, examine the bank realization certificates and after affording an opportunity of the personal hearing to the authorized representative of the petitioner, pass appropriate orders on merits and in accordance with law. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMPs are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Joint Director General of Foreign Trade,
Office of the Joint Director of Foreign Trade,
1544, India Life Building (Annexe),
Ist Floor, Trichy Road
Coimbatore - 18.

2.The Zonal Additional Director General of Foreign Trade,
Shastri Bhawan,
No.26, Haddows Road, Chennai - 6.

3.The AC of Customs (Group - 7),
Custom House, No.60,
Rajaji Salai, Ch-1.

+2cc to Mr.S.Rajasekar, Advocate Sr. 70414
+1cc to Mr.B.Rabu Manohar, Advocate SR. 70295
+1cc to Mr.S.Murugappan, Advocate Sr. 69664

WP.No.25139 and 25140 of 2017 &
W.M.P.Nos.26573 to 26576 of 2017

GMR(CO)
VR(12/10/2017)