

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15008 of 2008

M/S.GENAU EXTRUSIONS LTD.
37, JOSIER ST
NUNGAMBAKKAM, CHENNAI 34.

[PETITIONER]

Vs

1 THE ASST. COMMISSIONER OF CUSTOMS [EPCG]
O/O. THE COMMISSIONER OF CUSTOMS[EXPROT]
CUSTOMS HOUSE,NO.60,RAJASALAI, CHENNAI.

2 THE DIRECTOR GENERAL OF FOREIGN TRADE
UDYOG BHAAN NEW DELHI.

3 THE SENIOR MANAGER
CENTRAL BANK OF INDIA NUNGAMBAKAM
CHENNAI 6.

[RESPONDENTS]

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus calling for the records relating to the impugned order of the 1st respondent therein passed in his file NO.S 45/202/1997-EPCG dt. 11.6.2008 and quash the same as illegal directing the 3rd respondent herein not to enforce/encash Bank Guarantee No.25/14 dt. 05.03.1998 and No.25/7 dated 4.9.1997.

For Petitioner : Mr.N.Kannan

For Respondents : Mr.Rajasekaran, CGSC (R1)
Mr.V.Venkatesan, CGSC (R2)

ORDER

Heard Mr.N.Kannan, learned counsel for the petitioner, Mr.Rajasekaran, learned Central Government Standing Counsel for R1 and Mr.V.Venkatesan, learned Central Government Standing Counsel for R2.

2.1 The petitioner is a Company, engaged in the manufacture of automobile goods, which are exported using machinery imported under the Export Promotion Capital Goods Scheme (EPCG). The petitioner is stated to have manufacturing the components and exported the same through M/s Tata

Limited. They further claim that they have fulfilled 100% of the export obligation and thereafter submitted all the required documents for issuance of redemption Certificate in Form Appendix 9-A. The petitioner is stated to have addressed the Joint Director General of Foreign Trade vide their letter dated 12.04.2007 for redemption and to issue export obligation discharge certificate and the matter is pending before the 1st respondent.

2.2 In the meantime, since action was initiated in attempting to encash the bank guarantee furnished by the petitioner by issuing the impugned proceedings to the 3rd respondent Bank, the petitioner has filed this writ petition.

3. At the time when the writ petition was entertained, an order of status-quo was granted on 26.06.2008, which is in force till date.

4. The consistent case of the petitioner is that they have completed the export obligation by exporting the products through third party exporters, whose names or details have been furnished by the petitioner. The petitioner would state that since the exports were done through third party exporters, they are not in possession of the original shipping bills, but have submitted copies of those shipping bills to the department for verification and issuance of the discharge certificate.

5. In the counter affidavit filed by the Joint Director of Foreign Trade, Chennai, it is stated that the petitioner has failed to produce the shipping bill originals along with the application form to the licensing authority and therefore, they were advised to produce the original shipping bills and having failed to do so, the authority has rejected the request for issuance of redemption certificate.

6. Thus, the issue involved in this writ petition is whether the petitioner has fulfilled his export obligation. If the scheme provides for the importer to export the goods through third party exporters, then, the competent authority under the Scheme is entitled to examine the correctness of the stand taken by the exporter. In the instant case, the department would admit that the petitioner had produced copies of the shipping bills, but the department is insisting upon the originals, which are not available with the petitioner, as they are third party documents and they claim that exports were done through those two third parties. As observed earlier, if the scheme permits for such procedure, then, the proper officer of the Directorate General of Foreign Trade can examine the genuineness of the claim made by the petitioner by making appropriate verification with regard to the license number, quantity of the product exported etc.

7. For all the above reasons, the writ petition is disposed of by directing the petitioner to appear before the

Joint Director General of Foreign Trade and produce the copies of the shipping bills, which according to the petitioner were done through third party exporters and on receipt of the same, if the scheme provides for such exports through third parties, then the proper officer of the Joint Directorate General of Foreign Trade, shall examine the genuineness of those exports and pass a speaking order, on merits and in accordance with law.

8. It is submitted by the learned counsel for the petitioner that the bank guarantee furnished by the petitioner had expired and not being renewed and an order of status-quo was granted in the writ petition. Learned counsel for the 1st respondent would submit that the bank guarantee has already been encashed. If that is so, then, no further directions are issued in that regard, but, if the bank guarantee has not been encashed till date, the petitioner shall keep the bank guarantee renewed and in force, till orders are passed by the competent authority.

No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

- 1 THE ASST. COMMISSIONER OF CUSTOMS [EPCG]
O/O. THE COMMISSIONER OF CUSTOMS[EXPROT]
CUSTOM HOUSE,nO.60,RAJA SALAI, CHENNAI.
- 2 THE DIRECTOR GENERAL OF FOREIGN TRADE
UDYOG BHAAN NEW DELHI.

+1CC TO Mr.S.Rajasekar,Advocate sr.47520
(standing counsel for customs central
Excise & Service Tax)

+1cc to Mr.V.Venkatesan,Advocate sr.47572
(standing counsel for R2)

+1cc to Mr.N.Kannan,Advocate sr.47726

W.P.No.15008 of 2008

ss(19/7/2017)