IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.16408 to 16411 of 2006

M/s.Parmar Exports
Rep. by its Proprietor
210, Mint Street,
Park Town,
Chennai 600 003. ...Petitioner in W.P.No.16408 of 2006

M/s.Samy Metal Industries,
Rep. by its Proprietor
New No.9 (Old No.15), Ponnappan Lane
Waltax Road
Chennai 600 003. ...Petitioner in W.P.No.16409 of 2006

M/s.Ayyappan Industries
Rep. by its proprietor
5,4th Street, First Floor, Indira Gandhi Nagar,
Tondiarpet,
Chennai 600 081. ...Petitioner in W.P.No.16410 of 2006

Shri J.S.Babu INCorporated
Block No.B-5, Ground Floor
No.59, Bakker street, Choolai,
Chennai 600 112. ...Petitioner in W.P.No.16411 of 2006

Vs.

The Joint Director General of Foreign Trade
Officer of the Zonal Joint Director General of Foreign Trade
38&39, Whites Road,
Royapettah, Chennai 600 014. ...Respondent in all Wps.

Prayer in all W.Ps.

Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent dated 17.05.2006 in F.Nos.04/04/130/00393/AM98, 04/08/130/00693/AM04, 04/08/130/03158/AM04, 04/08/130/02803/AM03 respectively, and consequentially forbearing the respondents from in any way interfering with the foreign trade of the petitioner in importer-Exporter Code Nos.0497002779, 040306813, 0403031028, 0402027825 unless with due process of law.

For Petitioner : Mr.A.Thiyagarajan, Senior Counsel for Mr.S.Ramesh Kumar

For Respondent : Mr.Patty B. Jaganathan

C O M M O N O R D E R

Heard Mr.A.Thiyagarajan, the learned Senior Counsel appearing for the petitioners and Mr. Patty B. Jaganathan, the learned counsel for the respondent.

2. The petitioners are aggrieved by the orders passed by the respondent, dated 17.05.2006, which is a three line order, stating that the operation of the Importer-Exporter Code Numbers have been suspended by the respondent, as, some adverse remark reports have been received against the petitioners.

3. The petitioners challenged the impugned orders, by contending that, it is wholly in violation of the Foreign Trade (Development and Regulation) Act 1992. Pending disposal of the Writ Petitions, the petitioners sought for an order of interim injunction, and the Court passed a detailed interim order, dated 30.06.2006 whcih reads as follows :-

> " In all these Petitions, the petitioners have obtained the importer-exporter code Numbers from the respondent. By the impugned orders, the code numbers were suspended on the ground that the respondent received some adverse report against the petitioners. My attention is drawn to Section 8 of the Foreign Trade Development and Regulation Act, 1992 relating to Suspension and cancellation of importer-exporter code numbers which reads as follows:
> 1) Where
> a) any person has contravened any law relating to Central Excise or customs or foreign exchange or has committed any other economic offence under any other law fro the time being in force as may be specified by the Central Government by notification in the Official Gazette or

b) the Director General has reasons to believe that any person has made an export or import in a manner gravely prejudicial to the trade relations of India with any foreign country or to the intrests of the other persons engaged in imports or exports or has brought disrepute to the credit or the goods of the country.

But para 2 of sub section (b) reads as under:-

> "The Director General may call for the record or any other information from that person and may, after giving to that person anotice in writing informing him of the grounds on which it is proposed to suspend or cancel the Importer-Exporter code Number and giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires , of being heard, suspend for a period, as may bespecified in the order, or cancel the importer-Exporter Code Number granted to that person."

2. A plain reading of the said paragraph shows that though the power is conferred on the Director General to suspend the code numbers. However, before any order is passed , the person who is likely to be affected should be informed by notice in writing on the ground on which it is proposed to suspend or cancel the importer-exporter code numbers and also should be given a reasonable opportunity for making a representation in writing. There is no dispute that before the impugned orders are passed, the petitioners were not given the opportunity as contemplated in the above paragraph.

3. Mr. Patty B.Jagannathan, learned counsel appearing for the respondent has produced before the Court a communication

> received from the Deputy Director General of Foreign Trade and contended that the order of suspension was made as the petitioner's firm has withdrawn to the tune of Rs.1.8 crores by adopting fraudulent methods and the investigation is pending and to avoid further misuse of the IEC in the trade activities, the interim order of suspension was passed. He also submitted that the investigation is pending and on prima facie consideration of the outcome of the investigation, the petitioners will be given due opportunity by way of issuance of show cause notice and also by way of personal hearing before any orders are passed to suspend or cancel their IEC numbers permanently.
>
> 4. I have given my consideration to the above submissions. Insofar as the power under Section 8 of the Act is concerned, even for a temporary suspension, the beneficiary of the code number should be afforded an opportunity as contemplated under para 2 of Section 8 (b) of the Act. Admittedly, such opportunity was not given and on the sole ground that the impugned order cannot be sustained. Nevertheless, considering the serious complaint against the petitioners, the respondent also must be given opportunity to proceed further as per law especially when the interrogation is pending.
>
> 5. Hence, there will be an interim direction to the respondent to keep the impugned orders in abeyance, till such time the enquiry as contemplated under law is completed and final orders are passed. In that view of the matter, liberty is also given to the respondent to proceed further with the pending investigation as to the alleged irregularities or violation or contravention of the provisions of the Act by the petitioners.
>
> With the above direction, the WPMPs are closed."

4. The learned Senior Counsel appearing for the petitioners does not have any information as to what transpired after the above interm order, wheather any enquiry was

conducted or investigation was completed. In any event, the impugned order remain stayed. For all these years, no counter affidavit has been filed by the respondent/Department, and therefore, the impugned order cannot be given effect to at this juncture, having been kept in abeyance from 2006. However, it is open to the respondent to proceed with the investigation, if the same is still pending.

5. With the above observation, the Writ Petitions are disposed of . No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

sd

To

The Joint Director General of Foreign Trade
Officer of the Zonal Joint Director General of Foreign Trade
38&39, Whites Road,
Royapettah, Chennai 600 014.

+1cc to M/S.A.Thiyagarajan, Advocate Sr. 55445

Writ Petition Nos.16408
to 16411 of 2006

RSI(CO)
VR(03/10/2017)