

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2017

Coram

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

Writ Petition Nos.36199 to 36202 of 2003
and
W.P.M.P.Nos.43941 & 43942 of 2003

M/s.Super Textiles,
Rep. by its Proprietor
R.Arumugam

...Petitioner in W.P.Nos.36199 & 36200 of 2003

M/s.Yuvaraj Textiles,
Rep. by its Proprietor,
A.Shanmugasundaram.

...Petitioner in W.P.Nos.36201 & 36202 of 2003

Vs.

1. The Commissioner,
Central Excise,
6/7 ATD Street, Race Course,
Coimbatore 641 018.
2. The Superintendent,
Central Excise,
Coimbatore IV E Range,
113 Mangalam Road,
Palladam 641 664.
3. The Development Commissioner,
Madras Export Processing Zone,
Administrative Office Building,
National High way 45,
Tambaram.
Chennai-600 015.

...Respondents in
all W.Ps.

\

W.P.No.36199 of 2003

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the 1st respondent in proceedings having ref.no.C.No.V/52/15/312/03-Cx. Adj Sl.No.367/03 (COMMR) dated 07.11.2003 and to quash the same.

W.P.No.36200 of 2003

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the 1st respondent to follow the direction of the 3rd respondent in its letter, dated 06.05.2002 having Ref.No.F.No.19/51/97-EOU-TN/1090, and to give ex post facto approval for the job work carried out by the petitioner during the period from 01.11.2000 to 10.10.2001, and to issue the requisite certificate for final de-bonding of the petitioner's Unit from 100% EOU status to operate as DTA unit.

W.P.No.36201 of 2003

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the 1st respondent in proceedings having ref.no.C.No.V/52/15/99/2002- Cx.Adj SCN Sl.No.365/2003 (COMMR) dated 31.10.2003 and to quash the same.

W.P.No.36202 of 2003

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the 1st respondent to follow the direction of the 3rd respondent, in its letter, dated 06.05.2002 having Ref.No.F.No.19/52/97-EOU-TN/1089, and to give ex post facto approval for the job work carried out by the petitioner during the period from 01.01.1999 to 10.10.2001 and to issue the requisite certificate for final debonding of the petitioner's Unit from 100% EOU (Export Orient Unit) status to operate as DTA unit.

For Petitioner : M/s. C.Uma for
Mr.L.S.M. Hasan fizar

For Respondents 1& 2 : Mr.A.P.Srinivas
Senior Standing Counsel

For Respondent-3 : Mr.J.Madanagopal Rao
Central Govt.Standing Counsel

COMMON O R D E R

Heard M/s.C. Uma, the learned counsel, representing Mr.L.S.M. Hasan fizal, the learned counsel for the petitioners, Mr.A.P.Srinivas, learned Senior Standing Counsel for respondents 1 and 2, and Mr.J. Madanagopal Rao, learned Central Government Standing Counselor for the third respondent.

2. All these Writ Petitions have been filed by the petitioners, challenging the show cause notices issued by the first respondent, dated 07.11.2003 and 31.10.2003.

3. The reason for approaching this Court, by way of these Writ Petitions, challenging the show cause notices is on the ground that the third respondent, by letters, dated 06.05.2002, has addressed the first respondent stating that, since the petitioner could not get export orders, it has done job work for other exporters. Even though, the petitioners did not get the permission of the Central Excise Authorities, the goods, so manufactured, were exported by the other exporters. Therefore, the petitioners have contended that the supply to the exporters will be considered as deemed export, and the petitioners should be considered to have fulfilled the EOU obligations, and therefore, the show cause notices are without jurisdiction.

4. The learned counsel for the petitioners has drawn the attention of this Court to the additional typed-set of papers, wherein, the petitioners have enclosed several documents, which also includes the letters from the Assistant Commissioner, Central Excise, permitting the petitioners for removal of the non duty paid cotton, Letters of Madras Export Processing Zone (MEPZ) to the petitioners, etc.,

5. In my considered view, the issue, as to whether the exports, which are said to have been done by the petitioners, by doing job work for other exporters, would qualify for treating the same as deemed export, and consequently, to hold that the petitioners have fulfilled export obligations, is primarily a factual issue, which has to be considered by the concerned Authorities and the same cannot be decided in a Writ Petition. In the light of the abundance production of documents, which have been filed before this Court, in the form of typed-set of papers, this is a fit case, where, the first respondent should be directed to consider the entire matter, after taking note of all the documents, which are placed before him.

6. In the light of the above, all these Writ Petitions are disposed of, by directing the petitioners to submit their replies to the show cause notices within a period of 30 days' from the date of receipt of a copy of this order, along with all the documents, which they propose to rely upon. On receipt of the replies, the first respondent shall afford an opportunity of personal hearing, and consider the documents produced and their admissibility, tenability, validity, etc., and pass a speaking order on merits and in accordance with law. Till the adjudication is completed, no coercive action shall be initiated against the petitioners, because, the petitioners have interim order from 15.12.2003, and so far, the respondents have not filed counter affidavit. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nmm/sd

To

1. The Commissioner,
Central Excise,
6/7 ATD Street, Race Course,
Coimbatore 641 018.

2. The Superintendent,
Central Excise,
Coimbatore IV E Range,
113 Mangalam Road,
Palladam 641 664.

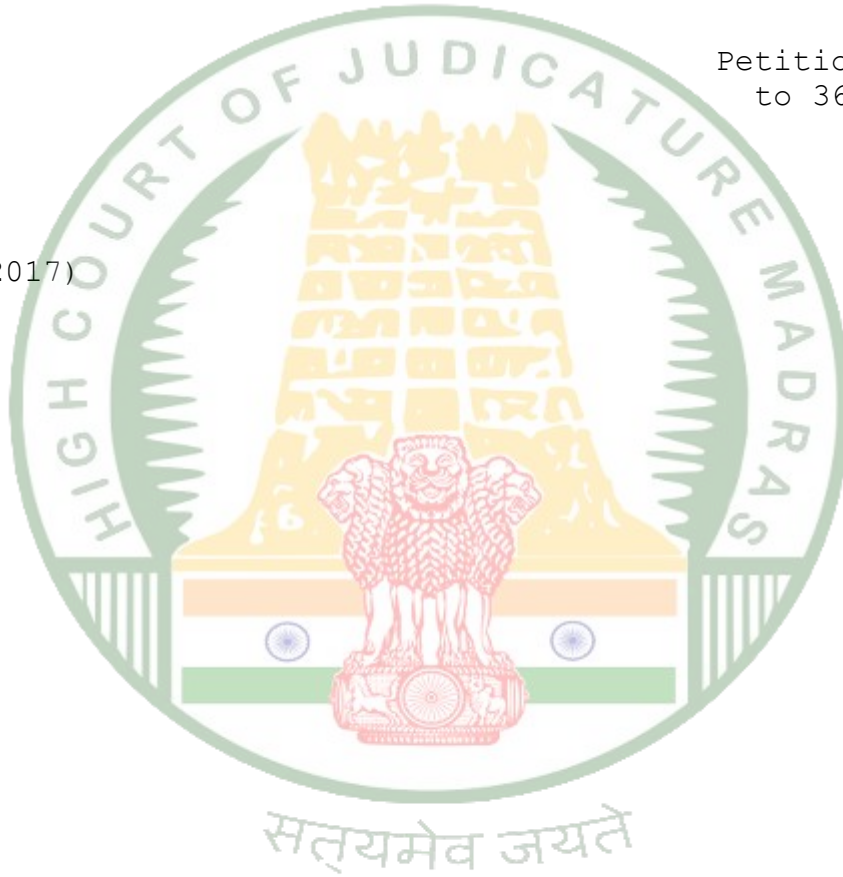
सत्यमेव जयते
WEB COPY

3. The Development Commissioner,
Madras Export Processing Zone,
Administrative Office Building,
National High way 45,
Tambaram.
Chennai-600 015.

+1cc to M/s.T.Madanagopal Rao, Advocate, S.R.No.50599

Writ
Petition Nos.36199
to 36202 of 2003

KS (CO)
CU (28/08/2017)



WEB COPY