IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.38448 of 2002

Callibre Exports ..Petitioner

Vs

1. Tamil Nadu Forest Plantation, Corporation Limited, AA/26, Anna Nagar, Tennur, Tiruchirapaali-620 017.

2. The State of Tamil Nadu, Rep.by its Secretary to Government, Ministry of Environment and Forest, Fort St.George, Chennai.

3. Union of India, Rep.by Secretary, Ministry of Environment and Forest, Paryawaran Bhavan, CGO Complex, New Delhi-110 003.

4. Director General of Foreign Trade, New Delhi.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 2nd, 3rd, and 4th respondents to grant permission to the 1st respondent to ship the 10,000 kgs and 5,000 kgs of Jaipokal I Class Sandal Wood Billets to the Mikuni & Co Ltd. and Koyu Trading Co.Ltd respectively.

For Petitioner : Mrs.C.Uma for Silambanan
For Respondents: Mr.Manokaran, AGP for R1
Mr.J.Madhana Gopal Rao for R2 to R4

ORDER

The prayer sought for in this writ petition is for a writ of mandamus directing the respondents 2 to 4 to grant permission to the 1st respondent to ship the 10,000 kgs and 5,000 kgs of Jaipokal I Class Sandal Wood Billets to the Mikuni & Co Ltd. and

Koyu Trading Co.Ltd respectively.

2. The short facts which are required to be noted for the disposal of this writ petition are as follows:

[a] The 1st respondent by proceedings dated 28.09.2000 issued Global Tender Notice for export of Sandal Wood Oil, Sandalwood Heartwood chips etc., inviting the sealed tender from Foreign buyers or their agents for export of Sandal Wood products. As per the conditions of the Tender, the Earnest Money Deposit equal to 1% of tendered value should be enclosed in the shape of Demand Draft.

[b] By letter dated 04.10.2000, the 1st respondent sent a Tender notice for export to the petitioner, requesting the petitioner to participate in the Tender for taking Sandal Wood for export. Since the buyer from Japan had accepted 10 metric tonnes of Sandal Wood logs to be imported directly from the 1st respondent, the said Company had remitted 2000 US Dollars to the petitioner, in two equal instalments, both amount being 1% each of the total consignment value for the Global Tender.

[c] On participating in the Global Tender, the petitioner had submitted a Demand Draft for the sum of Rs.43,700/- and Rs.87,400/- on 02.11.2000 and 07.11.2000 respectively, being 1% of the value of the goods to be exported and on receipt of the confirmation of the Tender, 2 Letter of Credits would be established for 100% value.

[d] As per the procedure, which was in a vogue, that, for export of Sandalwood items, express permission from the Government of India through the respondents 3 and 4 have to be obtained. Only on obtaining such permission, the 1st respondent can permit the export of the Sandalwood. Though 1% of Earnest Money Deposit had been deposited as stated above and the petitioner had sent so many requests in the years 2001 and 2002 on various days, to expedite the process of getting permission from the respondents 3 and 4, no such permission was obtained from the 3rd and 4th respondents. Only in the circumstances, the petitioner had approached this Court by filing this writ petition with the above said prayer.

3. I have heard the submission of Mrs.C.Uma, learned counsel appearing for the petitioner and Mr.Manokaran, learned Additional Government Pleader for the 1st respondent and Mr.J.Madhana Gopal Rao, learned Senior Central Government Panel Counsel appearing for respondents 2 and 4.

4. The learned counsel appearing for the 1st respondent would submit that the Global Tender was floated for export of Sandalwood items only on the expectation that the permission would be given by the 3rd and 4th respondents and that is the

reason why the Bid was not confirmed in favour of the petitioner or their principal buyer (Foreign buyer). In this regard, the learned counsel appearing for the 1st and 2nd respondents relied upon the following averments in the counter affidavit filed by them. Paragraph No.9 of the counter affidavit reads as follows:

> 9.This respondent submits that the contention, that the Corporation has failed to comply with the tender condition, is wrong, as the Corporation has not issued any confirmed orders/sale orders due to non receipt of export licence from the Government of India and approval from the Government of Tamil Nadu. There is no conclusion of sale as such and there is a specific condition in the tender condition that the quoted price would be valid upto 90 days only after the issue of order. The Corporation has not issued any confirmation due to non receipt of export license from the Government of India and as such there is no concluded contract between the parties. The Government of India have declined permission vide their Ref.No.5-4/99-SU (Vol.II) dated 20.11.2002 stating that "After, detailed examination it has been decided not to accede to your request for export of 15 M.T. of sandalwood in the form of logs."

5. However, the learned counsel appearing for the petitioner would submit that, only on the Global Tender floated by the 1st respondent, the petitioner participated in the Tender and as per the condition, 1% of the value of the goods to be exported, had been deposited as Earnest Money Deposit and the 1st respondent have encashed the sum, given. Now turning around and saying that because a permission had not been given by the 3rd and 4th respondents, the Bid cannot be confirmed in favour of the petitioner, is per se unsustainable and therefore, they want to be permitted to export.

6. Mr.J.Madhana Gopal Rao, learned Senior Central Government Panel Counsel appearing for the 3rd and 4th respondents would also submit that it is the policy of the Government of India called EXIM Policy, by which, the goods and items which are to be exported or not to be exported, will be decided from time to time. Certain goods are prohibited from export as per the policy of the Government of India and since the Sandalwood logs are also the banned items, no permission can be given by the 3rd and 4th respondents either permitting the 1st respondent or any other person including petitioner to export Sandalwood logs to any foreign countries. Therefore by communication dated 20.11.2005, the respondents 3 and 4 have rejected the request for permission for export of Sandalwood logs. Since it is also the decision of the Government of India not to allow export of Sandalwood logs, which is based on the EXIM policy being adopted by the Government of India, one cannot compel the Government to

give such a permission to export.

7. It is a stand of the 1st respondent that only on the expectation that the 3rd and 4th respondents would give permission for such export, Tenders were floated and subsequently, once the Government of India refused to give such permission, the 1st respondent was not in a position to proceed further. Therefore, no confirmation of the Bid towards the petitioner has been made by the 1st respondent. At the same time, the 1st respondent has admitted in paragraph No.12 of the counter about the encashment of the Demand Draft for the Earnest Money Deposit paid by the petitioner. The reason for such encashment, the 1st respondent states in the counter that, if it is not encashed, it will become invalid and the same will be returned, if the tender would not be accepted. Therefore, this is the procedure of the 1st respondent/Corporation to encash the Earnest Money Deposit submitted by way of Demand Draft by the Tenderers.

8. I have considered the submission made by the learned counsel appearing for the petitioner as well as the respondents and also perused the materials placed before it.

9. Since the Government of India is the Authority to grant permission for export of Sandalwood logs, which they have not given for the reason that as per the policy, Sandalwood logs cannot be permitted to export, the prayer sought for by the petitioner to give a mandamus to the respondents 3 and 4 to give such permission to the 1st respondent cannot be granted.

10. However, this is the fact that 1% of Earnest Money Deposit had been deposited by way of Demand Draft by the petitioner which is admittedly been encashed by the 1st respondent / Corporation and this factor, they have admitted in the very counter affidavit itself.

11. Once, the 1st respondent was not able to get a approval or permission from the Government of India and on that ground, if the 1st respondent was not in a position to confirm the Bid, it is for the 1st respondent to immediately give back the Earnest Money Deposit amount paid by the petitioner, since, the 1st respondent, having encashed the amount, has not come forward either to return the money or get any permission from the Government of India. It is a bad on the part of the 1st respondent being the Government Organisation to withhold the third parties money which is nothing but an unjust enrichment. It is also submitted during the course of arguments, by the learned counsel for the 1st respondent that, the 1st respondent has been merged with the 2nd respondent / State Government as the 1st respondent has not independently functioning as of now. At any rate, the EMD amount paid by the petitioner have been

encashed by the 1st respondent and the 1st respondent got merged with the 2nd respondent / State Government Department and how it is the 2nd respondent to give back the Earnest Money Deposit deposited by the petitioner.

12. In the result, following orders are passed in this writ petition:

[1] The prayer sought for by the petitioner herein by way of mandamus cannot be granted.

[2] However, the petitioner shall be entitled to get back the Earnest Money Deposit amount paid by them to the 1st respondent, being 1% of the value of the goods to be exported.

[3] Since, the said Earnest Money Deposit amount admittedly had been encashed by the 1st respondent and it is subsequently been merged with the 2nd respondent, the 2nd respondent is directed to pay back the said amount of Earnest Money Deposit paid by the petitioner with 12% interest from the date of deposit till the date of payment. Such exercise shall be made within a period of two months from the date of receipt of a copy of this order.

13. With this observation/directions, the writ petition stands disposed of. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
1. Tamil Nadu Forest Plantation,
   Corporation Limited,
   AA/26, Anna Nagar, Tennur,
   Tiruchirapaali-620 017.

2. The Secretary to Government,
   Ministry of Environment and Forest,
   Fort St.George,
   Chennai.

+1 CC to Govt. Pleader sr 88375.
+1 CC to Mr.J. Madanagopal, Advocate sr 88313.
+1 CC to Mr.C. Uma, Advocate sr 88462.

W.P.No.38448 of 2002

SS(CO)
SP(08/02/2018)