

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.9750 of 2018

&

W.M.P.No.11673 of 2018

M/s.Sri Lakshmi Saraswathi Spintex Ltd.,
Represented by its Managing Director
Mr.C.S.Aditya Praveen
Having Office at New No.9, Old No.8
Crescent Road, Shenoy Nagar
Chennai - 30 ... Petitioner

-vs-

1. Director General of Foreign Trade
Policy Relaxation Committee
Ministry of Commerce and Industry
Udyog Bhavan, New Delhi
- 2.Zonal Additional Director General of Foreign Trade
Ministry of Commerce and Industry
Shastri Bhavan, 4th Floor, Annexe
26, Haddows Road, Chennai-6
- 3.Assistant Director General of Foreign Trade
Shastri Bhavan, 4th Floor, Annexe
26, Haddows Road, Chennai-6
- 4.Deputy Commissioner of Customs
O/o.Commissioner of Customs
Ministry of Finance
Customs House, No.60, Rajaji Salai
Chennai-1 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of second respondent pertaining to impugned order passed in F.No.04/21/040/221/AM13 dated 28.03.2018 demanding payment of Rs.22,56,485/- as composition fees for extending six months time for fulfilling the export obligation under advance authorization No.0410139033 dated 23.08.2012 as illegal and in violation of

the order passed in W.P.Nos.2304 & 2305 of 2017 dated 05.02.2018 and quash the same and consequently direct the second respondent to extend six months time from the date of such extension.

For petitioner : Mr.Adinarayana Rao

For Respondent : Mr.J.Madhana Gopal Rao
Sr. Central Govt. Standing Counsel
for R1 to R3

Mr.T.Pramod Kumar Chopda for R4

O R D E R

Heard Mr.Adinarayana Rao, learned counsel for the petitioner, Mr.J.Madanagopal Rao, learned Senior Central Government Standing Counsel appearing for respondents 1 to 3 and Mr.T.Pramod Kumar Chopda, learned senior standing counsel for the fourth respondent.

2.This is the third round of litigation which the petitioner has initiated before this Court for virtually the same purpose. The issue, which falls for consideration in this writ petition lies in a narrow compass, that is to say as to whether the petitioner is required to pay a sum of Rs. 22,56,485/-, being the compensation fee for being entitled for extension of time to complete the export obligation in terms of the advance authorisation permission dated 23.08.2012. In terms of the said permission, the petitioner had time till 31.03.2014 to complete the export obligation as per the stipulation in DEEC licence. The petitioner was unable to do so and sought for extension vide application dated 05.01.2015. Undoubtedly, this application was not disposed of and was pending.

3. The petitioner followed up the said application by a representation dated 18.05.2017. In the meantime, the Customs Department, the fourth respondent herein, in whose favour a bond and Bank Guarantee were furnished, to ensure compliance of the conditions of advance authorisation, had encashed the Bank Guarantee, since the petitioner failed to produce Export Discharge Certificate from the third respondent. Thereafter, the second respondent issued show-cause notice dated 03.05.2017 under Section 14 for initiating action under Section 9(2) of the Foreign Trade (Development and Regulation) Act, 1992. The show-cause notice proposed as to why the petitioner's name should not be placed under Denied Entry List (DEL) refusing issuance of further licence and renewal of old licence in terms of the Rule 3 of the Foreign Trade (Regulation) Rules, 1993 r/w. Section 9 of the Act. The petitioner submitted their reply to the show-

cause notice vide letter dated 22.05.2017, wherein among other things, they have stated that they have taken up the matter with Policy Relaxation Committee, New Delhi (PRC) and requested time till middle of September 2017 to appear for adjudication of the show-cause notice. This request was not accepted or rejected, but an order was passed on 29.05.2017 placing the petitioner under the DEL. The petitioner requested for revocation of the said order vide representation dated 27.07.2017. Since the same was not considered, the petitioner filed W.P.Nos.21634 and 21636 of 2017, wherein the petitioner sought for removing their name from DEL and for seeking extension of time to comply with the export obligations in terms of Advance Authorisation dated 23.08.2012. The writ petitions were disposed of by a common order dated 16.08.2017 with a direction to consider the petitioner's representation dated 22.05.2017 seeking extension of time, examine the bonafides of the representations in accordance with the relevant regulations and pass a speaking order within a time frame. The order was communicated by the petitioner to the respondents 1 to 3 vide representations dated 09.09.2017 and 20.09.2017.

4. Ultimately by communication dated 17.10.2014, the petitioner's application for extension was held to be deficient since the petitioner has not furnished composition fee as per paragraph 4.42 of the Handbook of Procedures of Foreign Trade Policy 2015-20 and the petitioner was directed to produce supporting documents. The petitioner stated that they have already paid the composition fee Rs.41,027/- vide Demand Draft dated 27.12.2017. The said request was not considered and an order came to be passed, which was challenged by the petitioner in W.P.No.113 of 2018, which was filed to quash the order dated 16.11.2017 refusing to issue licence and placing the petitioner under DEL and for a consequential direction to consider the application made by the petitioner in accordance with Notification No.27 (RE-2012)/2009-2014 dated 28.12.2012. In the said writ petition, an interim order was passed stating that the said communication was not justified and a direction was issued to the respondents to pass appropriate orders vide order dated 05.01.2018.

5. This was followed by a letter dated 12.01.2018. While accepting the request for grant of extension, the extension was granted for a period of six months from the date on which the time limit initially expired. Subsequently, another order was passed on 19.01.2018 withdrawing the interim reply dated 12.01.2018. In the said order also it is reiterated that the extension shall be granted for a period of six months from the date of expiry of the initial export obligation. These orders were put to challenge by the petitioner in W.P.Nos.2304 and 2305 of 2018. They were heard together and were disposed of by a

common order dated 05.02.2018. The operative portion of the order reads as follows:

"8.I do not agree with the submissions made by the learned Senior Standing Counsel to remand the matter to the second respondent to consider the eligibility of the petitioner for such prospective extension. After the petitioner's representation seeking extension, though the composition fee has been paid by the petitioner not once or twice the second respondent has decided to grant the extension only upto 02.07.2014. Therefore, the question of remanding the matter to the second respondent to once again decide the issue is unnecessary and uncalled for.

9.In other words, the second respondent cannot be given an opportunity to revise his own order and he having not been vested with any such power to revise his own order under the relevant regulations, the question of remanding the matter does not arise.

10.With regard to the period for which the extension has to be granted, the respondent should have taken a realistic approach, because, admittedly, the petitioner is yet to fulfil the export obligation. Therefore, to grant extension up to August 2014 is an unworkable order and probably would serve statistical purposes only. Therefore to that extent the impugned orders in W.P.Nos.2304 and 2305 of 2018 call for interference.

11.With regard to the impugned order in W.P.No.113 of 2018 is concerned, though the respondent has referred to the order passed by this Court in the earlier writ petition, has not referred to the case numbers and not taken note of the order in its entirety. The court specifically directed that no coercive action shall be initiated against the petitioner. That would mean that the petitioner's business activities should not have been hampered and their names should not have been retained in the denied entity list. Therefore, the second respondent ought to have complied with the said direction and removed the petitioner's name from the denied entity list. Thus, when the same has not been done, the impugned order dated 16.11.2017 calls for interference.

12.For all the above reasons, W.P.Nos. 2304 and 2305 of 2018 are partly allowed and the impugned order dated 19.01.2018 is set aside in so far as it stipulates the period of extension for fulfilling the export obligation be calculated for a period of six

months from 22.02.2014 and the same is set aside with a direction to the second respondent to grant the petitioner extension of time by 6 months prospectively from the date of issuance of the order to be passed by the second respondent.

13. In the light of the orders passed by this Court in W.P.Nos. 21634 and 21636 of 2017 dated 16.08.2017 and the observations made above, W.P.No.113 of 2018 is allowed and the impugned proceedings dated 16.11.2017 are set aside and the respondents 2 and 3 are directed to remove the name of the petitioner's company from the denied entity list. Both the above directions shall be complied with, within a period of three(3) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed. "

6. In terms of the above order, the extension of time was directed to be granted prospectively for 6 months from the date of issuance of the order to be passed by the second respondent. Now the present impugned order has been passed on 28.03.2018 on a totally different ground stating that the petitioner should pay a total sum of Rs. 22,56,485/-.

7. The learned standing counsel for respondents 1 to 3 referred to paragraph 4.43 of the Handbook of Procedure of Foreign Trade policy 2015-20 and stated that the computation of composition fee is in accordance with said paragraph and it is proper.

8. Unfortunately, the respondent Department has lost sight of the fact that the initial application for extension of time remained undisposed of and was kept pending though the petitioner had remitted the composition fee as early as on 27.12.2017, being a sum of Rs.41,027/-. Therefore, at this juncture, directing the petitioner to remit composition fee till the period 30.09.2018 is wholly illegal and without jurisdiction. This Court would have been well justified in presuming that the impugned order has been passed to circumvent the direction issued in W.P.No.113 of 2018 dated 05.02.2018.

9. Be that as it may, since the application for extension of time having not been rejected and order has been passed granting extension of time on 19.01.2018, which was interfered only with regard to the date of extension, now the respondent Department cannot go back on what they have said in their order dated 19.01.2018 under the pretext of demanding higher composition fee .

10. Thus, for the above reasons, the impugned order demanding additional sum of composition fee over and above the amount already remitted by the petitioner is without jurisdiction and illegal.

In the result, the writ petition is allowed and the impugned order is set aside and the respondent is directed to take note of the payment effected by the petitioner, namely Rs.41,027/- vide communication 27.12.2017 and not demand any further amount and pass orders granting extension of time prospectively by six months from the date on which the order is to be passed by the second respondent and received by the petitioner. It is relevant to point out that in the impugned order the respondent has given option to the petitioner to regularise the case by payment of Customs duty and interest in terms of paragraph 4.28 of Handbook of Procedure of Foreign Trade policy 2015-2020. However, it appears that Customs Department has intimated the Director General of Foreign Trade about the encashment of the Bank Guarantee as early as on 11.01.2018. Thus, as of now the interest of Revenue has been fully protected. Therefore, the respondent should comply with the above direction within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

1. Director General of Foreign Trade
Policy Relaxation Committee
Ministry of Commerce and Industry
Udyog Bhavan, New Delhi
2. Zonal Additional Director General of Foreign Trade
Ministry of Commerce and Industry
Shastri Bhavan, 4th Floor, Annexe
26, Haddows Road, Chennai-6
3. Assistant Director General of Foreign Trade
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26, Haddows Road, Chennai-6

4. Deputy Commissioner of Customs
O/o. Commissioner of Customs
Ministry of Finance
Customs House, No.60, Rajaji Salai
Chennai-1

+1cc to Mr.J.MADANAGOPAL RAO, Advocate SR.No.53167
+1cc to Mr.T.PRAMOD KUMARCHOPDA, Advocate SR.No.53520

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MP (CO)
SMI/21.08.2018



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