In the High Court of Judicature at Madras

Dated : 28.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.11173 of 2018 & WMP.No.13109 of 2018

M/s.MIOT Hospitals Private Ltd., Chennai-89. ...Petitioner

Vs

1.Union of India, Ministry of Commerce & Industry, Department of Commerce, Jawayar Vaypar Bhavan, Tolstoy Marg, New Delhi-1.

2.Union of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-1.

3.The Additional Director General of Foreign Trade, IV Floor, Shastri Bhavan, No.26, Haddows Road, Chennai-6.

4.The Director General of Revenue Intelligence, 13, SIR Vithaldas Thackersey Marg, Opposite Patkar Hall, New Marine Lines, Mumbai-20. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to quash the letter F.No.04/21/ 021/00076/AM17 dated 23.3.2018 issued by the third respondent and direct the third respondent to decide the request of the petitioner vide letter dated 17.3.2018 to amend EPCG Authorization No.0430015780 dated 19.5.2016.

For Petitioner :Mr.Lakshmi Kumaran
For Respondents 1 & 3 : Mr.Rabu Mahohar, SSC
For Respondent-2 : Mr.A.P.Srinivas, SSC
For Respondent-4 : Mr.V.Sundareswaran, SSC

ORDER

Mr.Rabu Manohar, learned Senior Standing Counsel accepts notice for respondents 1 and 3. Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice for the second respondent. Mr.V.Sundareswaran, learned Senior Standing Counsel accepts notice for the fourth respondent. Heard both sides. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner imported true beam radiotherapy system under the Export Promotion Capital Goods (EPCG) Scheme of the Foreign Trade Policy. Under the said Scheme, the petitioner applied to the third respondent for an authorization for import of various capital goods including the unit of high energy linear accelerator true beam radiotherapy system, which is stated to be used for the treatment of cancer. The third respondent issued the EPCG authorization dated 19.5.2016 for several equipment. The third respondent fixed the export obligation as USD 8,224,093.96 (equivalent to INR 55,47,15,138/-), which is six times the duty saved amount of Rs.92,452,523/-. In terms of the said authorization, the petitioner was required to fulfill the export obligation within six years from the date of issue of the authorization by providing service to foreign patients. The average level of export, which the petitioner was required to maintain, was also mentioned. On the basis of the authorization, the petitioner imported six equipment during June 2016.

3. The fourth respondent initiated investigation into the import of true beam radiotherapy system on the ground that the equipment were wrongly classified. The fourth respondent was of the view that the impugned goods ought to have been classified under Tariff Item 9022 14 90 instead of Tariff Item 9022 90 30 adopted by the petitioner. Therefore, summons were issued on various dates and the petitioner appeared to have cooperated with the investigation done by the fourth respondent. Further, the petitioner, vide letter dated 14.3.2018, addressed to the fourth respondent stating the nature of the imported goods and also stating that they had no mala fide intention to claim a particular classification so as to evade payment of any customs duty, as they had opted to clear the goods under the EPCG Scheme thereby undertaking export obligation of six times the duty saved. The petitioner further submitted that in case duty was exempted under the said Scheme and in case the Department wishes to assess the same under different Chapter Tariff Head having higher rate of duty, the same should be debited in the EPCG Authorization, as they also have a credit balance of INR 3 Crores under the said Authorization.

4. Simultaneously, the petitioner approached the third respondent for amending the ITC-HS Code in the EPCG Authorization to 9022 14 90. In this regard, a letter was submitted to the third respondent on 17.3.2018. In response to

the said letter dated 17.3.2018, the third respondent sent the impugned reply thereby stating that the petitioner has to pay the differential duty with interest or produce a letter from the fourth respondent that they have no objection for amendment in the EPCG Authorization. Challenging the same, the petitioner is before this Court.

5. The first and foremost aspect that has to be pointed out is that the fourth respondent has not issued any demand for payment of differential duty along with interest. It is seen that the matter is now pending investigation and that the petitioner is cooperating with the investigation, more so in the light of the stand taken in the letter dated 14.3.2018. Even assuming that the fourth respondent comes to the conclusion that they have certain other evidence for not adopting the classification as 9022 30 90, a demand cannot be issued by the fourth respondent to the petitioner and at best, a show cause notice could have been issued. However, no such show cause notice has been issued to the petitioner.

6. The learned counsel for the petitioner refers to the circular issued by the Central Board of Excise and Customs dated 26.7.2004, which provides for corrective action.

7. In any event, the third respondent cannot insist for a no objection certificate from the fourth respondent. The third respondent, who functions under a different Statute governed by separate set of circulars and instructions issued by the Central Board of Excise and Customs, has to independently consider the request made by the petitioner vide their letter dated 17.3.2018.

8. For the above reasons, the writ petition is disposed of by directing the third respondent to take an independent decision on the petitioner's letter dated 17.3.2018 without insisting upon a no objection certificate from the fourth respondent. The third respondent shall consider the petitioner's letter dated 17.3.2018 and pass orders on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner or their authorized representative within three weeks from the date of receipt of a copy of this order. It is made clear that this order will not, in any manner, interfere with or hamper the investigation, which has been done by the fourth respondent and it is open to the fourth respondent to proceed in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RS

To

1.Union of India, Ministry of Commerce & Industry, Department of Commerce, Jawayar Vaypar Bhavan, Tolstoy Marg, New Delhi-1.

2.Union of India, Ministry of Finance, Department of Revenue, North Block,
New Delhi-1.

3.The Additional Director General of Foreign Trade, IV Floor, Shastri Bhavan,
No.26, Haddows Road, Chennai-6.

4.The Director General of Revenue Intelligence, 13, SIR Vithaldas Thackersey Marg, Opposite Patkar Hall, New Marine Lines, Mumbai-20.

+1cc to Mr.Lakshmi Kumaran, Advocate sr.no.32549
+1cc to Mr.Rabu Mahohar, Advocate sr.no.32166
+1cc to Mr.A.P.Srinivas, Advocate sr.no.32581
+1cc to Mr.V.Sundareswaran, Advocate sr.no.32551

WP.No.11173 of 2018&
WMP.No.13109 of 2018

gj(co)
nr 01/06/2018