

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.113,2304 & 2305 of 2018
and
W.M.P.Nos.157 and 2815 to 2818 of 2018

W.P.No.113 of 2018

M/s.Sri Lakshmi Saraswathi Spintex Ltd
Rep by its Managing Director
Mr.C.S.Aditya Praveen
Having office at New No.9, Old No.8
Crescent Road, Shenoy Nagar
Chennai - 600 030.
...Petitioner

Vs.

1. Director General of Foreign Trade
Policy Relaxation Committee
Ministry of Commerce and Industry (GOI)
Udyog Bhavan, New Delhi.
2. Zonal Additional Director General of Foreign Trade
Ministry of Commerce and Industry (GOI)
Shastri Bhavan, 4th Floor, Annexe
No.26, Haddows Road, Chennai - 6.
3. Assistant Director General of Foreign Trade
O/o Zonal Additional Director General of Foreign Trade
Ministry of Commerce and Industry (GOI)
Shastri Bhavan, 4th Floor, Annexe
No.26, Haddows Road, Chennai - 6.
4. Foreign Trade Development Officer
O/o Zonal Additional Director General of Foreign Trade
Ministry of Commerce and Industry (GOI)
Shastri Bhavan, 4th Floor, Annexe
No.26, Haddows Road, Chennai - 6.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus to call for the records on the file of the fourth respondent pertaining to File No.IEIS:04/21/92/00001/AM15 dated 16.11.2017 refusing to issue

licenses/Scripts on the ground that their company has been placed under denied entity list without considering the order passed in W.P.No.21364/2017 & W.P.No.21636 of 2017 dated 16.08.2017 and quash the same as illegal and arbitrary and consequentially direct the 4th respondent to consider the petitioners application made in File NO.04/21/092/00001/AM15 dated 10.04.2014 as per the Notification No.27 (RE-2012)/2009-2014 dated 28.12.2012 in accordance to law within time stipulated by this Hon'ble Court.

For Petitioner : Mr.Adinarayana Rao
For Respondents : Mr.M.Aravind Kumar
Senior Standing Counsel

W.P.No.2304 of 2018

M/s.Sri Lakshmi Saraswathi Spintex Ltd
Rep by its Managing Director
Mr.C.S.Aditya Praveen
Having office at New No.9, Old No.8
Crescent Road, Shenoy Nagar
Chennai - 600 030.

...Petitioner

Vs.

1. Director General of Foreign Trade
Policy Relaxation Committee
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3. Assistant Director General of Foreign Trade
Shastri Bhavan, 4th Floor, Annexe
No.26, Haddows Road, Chennai - 6.
4. Deputy Commissioner of Customs
O/o Commissioner of Customs
Ministry of Finance
Custom House, No.60, Rajaji Salai
Chennai - 600 001.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records on the file of the second respondent pertaining to impugned order passed in F.No.04/21/040/160/AM13 dated 19.01.2018 Extending six months time for fulfilling the export obligation under advance authorisation No.0410137481 dated 04.07.2012 which expired on 03.01.2014 for six months from date

of expiry i.e. until 02.07.2014 as illegal, impossible to comply and contrary to the order passed in W.P.Nos.21634 & 21636 of 2017 dated 16.08.2017 and quash the same and consequently direct the respondent to extend six months time from the date of extension apart from recalling the order passed by the third respondent pertaining to File No.04/83/165/00648/AM15 dated 29.05.2017 placing the petitioner company into denied entity list.

For Petitioner : Mr.Adinarayana Rao

For Respondents : Mr.N.Rajan (For R1 to R3)
Central Government Standing Counsel
Ms.Hema Muralikrishnan (For R4)
Senior Panel Counsel

W.P.No.2305 of 2018

M/s.Sri Lakshmi Saraswathi Spintex Ltd
Rep by its Managing Director
Mr.C.S.Aditya Praveen
Having office at New No.9, Old No.8
Crescent Road, Shenoy Nagar
Chennai - 600 030.

...Petitioner

Vs.

1. Director General of Foreign Trade
Policy Relaxation Committee
Ministry of Commerce and Industry (GOI)
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... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, call for the records on the file of the second respondent pertaining to impugned order passed in F.No.04/21/040/160/AM13 dated

19.01.2018 Extending six months time for fulfilling the export obligation under advance authorisation No.0410139033 dated 23.08.2012 which expired on 22.02.2014 for six months from date of expiry i.e. until 21.08.2014 as illegal, impossible to comply and contrary to the order passed in W.P.Nos.21634 & 21636 of 2017 dated 16.08.2017 and quash the same and consequently direct the respondent to extend six months time from the date of extension apart from recalling the order passed by the third respondent pertaining to File No.04/83/165/00648/AM15 dated 29.05.2017 placing the petitioner company into denied entity list.

For Petitioner : Mr.Adinarayana Rao

For Respondents : Mr.N.Rajan (For R1 to R3)
Central Government Standing Counsel
Ms.Hema Muralikrishnan (For R4)
Senior Panel Counsel

C O M M O N O R D E R

Heard Mr.Adinarayana Rao, learned counsel for the petitioner, Mr.M.Aravind Kumar, learned Senior Standing Counsel appearing for the respondents in W.P.No.113 of 2018 and Mr.N.Rajan, learned Central Government Standing Counsel appearing for respondents 1 to 3 in W.P.Nos.2304 & 2305 of 2018 and Ms.Hema Muralikrishnan, learned Senior Panel Counsel appearing on behalf of 4th respondent in W.P.Nos.2304 & 2305 of 2018.

2.Since the issues involved are common and relating to a Textile mill namely, M/s.Sri Lakshmi Saraswathi Spintex Limited, all the writ petitions are heard together and disposed of by this common order.

3.The petitioner applied for import and export licence, which was granted by the second respondent on 04.02.2011. Subsequently the petitioner applied for advance authorisation with duty free facility to import raw materials under the obligation to re-export finished goods. Such advance authorisation was granted to the petitioner on 04.07.2012. The advance authorisation contained a condition, by which the petitioner was obligated to export finished products within a specified time. The admitted fact is that the petitioner did not comply with the said condition within the time stipulated. Consequently, the benefits under the advance licence were required to be withdrawn by the respondents 1 to 3.

4.At this juncture, the petitioner submitted a representation dated 11.06.2014 seeking for extension of time to

enable them to fulfil the export obligation based on the advance authorisation. The petitioner sent further representation on 08.10.2014 by enclosing a demand draft for Rs.22,212/- stated to be the composition fee. However, the said application was kept pending. The petitioner on 14.10.2014 validated the bank guarantee and kept the same extended. Subsequently, there was a series of correspondence between the petitioner and the respondent department, which ultimately, culminated in the show cause notice dated 03.05.2017 calling upon the petitioner to submit why action should not be initiated against them for non-fulfilment of the export obligation. The petitioner appeared before the third respondent on 22.05.2017. It is the case of the petitioner that the authorised representative of the petitioner appeared before the third respondent and was compelled to give an undertaking that they undertake to pay the applicable duty within 90 days, failing which the company may be placed under the denied entity list.

5. According to the petitioner, immediately thereafter, in July 2017, they were able to locate a buyer and therefore, approached the respondent department requesting for extension of time to fulfil the obligation of re-export. The petitioner filed W.P.Nos.21634 and 21636 of 2017 challenging two orders passed by the third respondent both dated 29.05.2017 placing the petitioner's company into denied entity list and sought for a consequential relief to direct the first respondent to consider the various representations given by the petitioner and to extend the time granted in the advance authorisation dated 23.08.2012 and 04.07.2012 by another 6 months in order to fulfil the export obligation. The writ petitions were heard by this Court and by a common order dated 16.08.2017, they were disposed of by directing the second respondent to consider the petitioner's representation dated 22.05.2017, seeking extension of time, examine the bona fides of the representations in accordance with the relevant regulations and pass a speaking order, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of the order and till then, no coercive action shall be initiated against the petitioner. Pursuant to such direction, orders have been passed by the second respondent dated 19.01.2018 in respect of both the licences granting extension of time to the petitioner to fulfil the export obligation. But the extension to operate from the date on which the time limit for fulfilling an export obligation as per the original condition expires. Therefore, the effect of the impugned order is that the petitioner has been granted time to complete the export obligation by August, 2014. Aggrieved by such order, the petitioner has filed W.P.Nos.2304 and 2305 of 2018. Even prior to that since the petitioner continued to remain in the denied entity list in spite of protective order granted in favour of the petitioner in W.P.Nos.21634 and 21636 of 2017 dated 29.05.2017, the petitioner has challenged the said

proceedings dated 16.11.2017 by filing W.P.No.113 of 2018.

6.After elaborately hearing the learned counsel for the parties, I am of the considered view that the impugned orders in W.P.Nos.2304 and 2305 of 2018 though appear to grant relief to the petitioner have in fact denied the relief. While passing the impugned order, the second respondent has exercised his power and granted extension of time and further made a direction unworkable by stating that the direction will operate from 22.02.2014. Thus, the benefit granted in favour of the petitioner has ended in futility and the impugned order is a paper order, probably with a view to comply with the direction issued by this Court.

7.Mr.N.Rajan, learned Senior Standing Counsel would vehemently contend that if the court is of the view that the extension should have been prospective, then the matter should be remanded to the second respondent to consider the eligibility of the petitioner for extension of such prospective extension.

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.

s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

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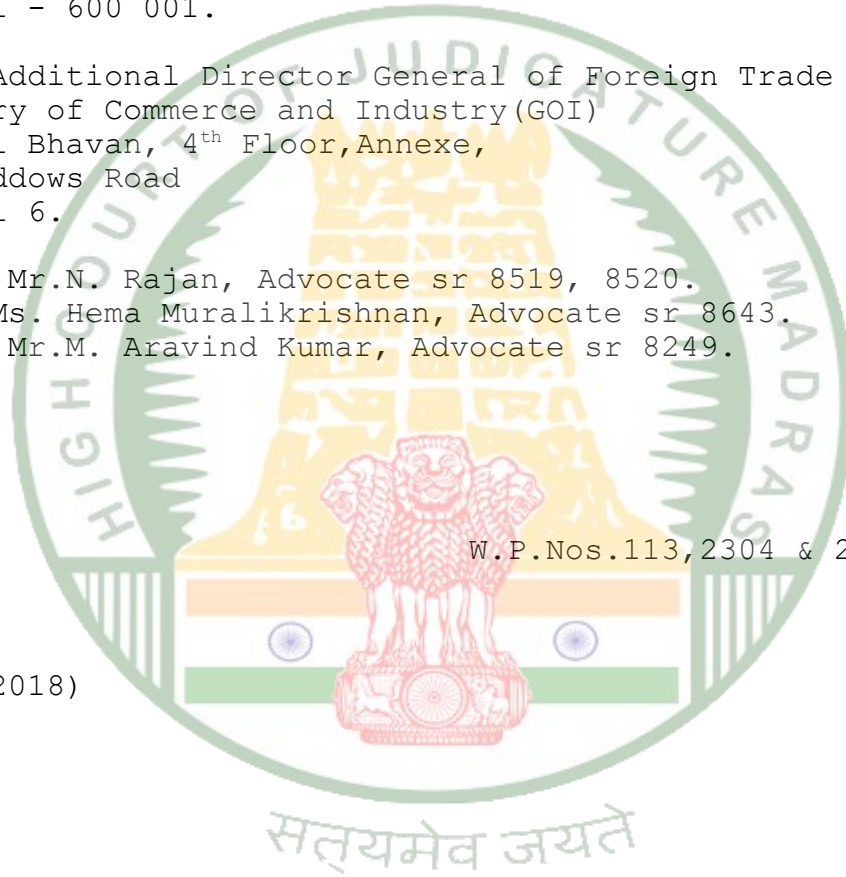
+2 Ccs to Mr.N. Rajan, Advocate sr 8519, 8520.

+1 CC to Ms. Hema Muralikrishnan, Advocate sr 8643.

+2 cCs to Mr.M. Aravind Kumar, Advocate sr 8249.

W.P.Nos.113,2304 & 2305 of 2018

KJ(CO)
SP(28/02/2018)



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