IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

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The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

W.A.Nos.2421 to 2425 of 2010

Sundaram Textiles Ltd.,
rep. by its Vice Chairman cum
Managing Director .. Appellant in all the appeals

Vs

1.The Union of India rep. by the
Secretary, Ministry of Commerce,
(Government of India),
Udyog Bhavan, New Delhi - 110 011.

2.The Union of India rep. by the
Secretary, Ministry of Finance,
(Government of India),
North Block, New Delhi - 110 011.

3.Director General of Foreign Trade,
Ministry of Commerce,
(Government of India),
Udyog Bhavan, New Delhi - 110 011.

4.The Commissioner of Customs,
Customs House, Rajaji Salai,
Chennai - 1.

5.The Assistant Commissioner of
Customs, Customs House,
Rajaji Salai, Chennai - 1. .. Respondents in all the appeals

Appeals preferred under Clause XV of Letters Patent against the order dated 20.04.2010 made in W.P.Nos.23722, 23723, 23724, 23725 and 23726 of 2004.

PRAYER IN W.P.No.23722 OF 2004: Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents 3, 4 and 5 to refund the total sum of Rs.28,24,764/- with interest as stipulated in Customs Act, 1962 covered in Bill of Entry No.08173 dated 23.02.1991 paid in excess of 25% Advalorem duty that is payable in accordance with Public notice No.59/ITC(PN) 90-93 dated 07.09.1990 and Notification No.169/90 Customs dated 03.05.1990.

PRAYER IN W.P.No.23723 OF 2004: Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents 3, 4 and 5 to refund the total sum of Rs.26,71,653/- with interest as stipulated in Customs Act, 1962 covered in Bill of Entry No.21680 dated 23.11.1990 paid in excess of 25% Advalorem duty that is payable in accordance with Public notice No.59/ITC(PN) 90-93 dated 07.09.1990 and Notification No.169/90 Customs dated 03.05.1990.

PRAYER IN W.P.No.23724 OF 2004: Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus quashing the order passed in File No.01/36/18/291 AM90/EPC G-I 6038 dated 22.03.2002 by the 3rd respondent and direct him to issue a certificate under para 197 of the Import-Export Policy 1990-93, that the export obligation relating to the imported machineries have been completed by the petitioner and pass such further orders.

PRAYER IN W.P.No.23725 OF 2004: Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents 3, 4 and 5 to refund the total sum of Rs.22,03,316/- with interest as stipulated in Customs Act, 1962 covered in Bill of Entry No.05983 dated 15.02.1991 paid in excess of 25% Advalorem duty that is payable in accordance with Public notice No.59/ITC(PN) 90-93 dated 07.09.1990 and Notification No.169/90 Customs dated 03.05.1990.

PRAYER IN W.P.No.23726 OF 2004: Writ Petition filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents 3, 4 and 5 to refund the total sum of Rs.22,03,316/- with interest as stipulated in Customs Act, 1962 covered in Bill of Entry No.05988 dated 15.02.1991 paid in excess of 25% Advalorem duty that is payable in accordance with Public notice No.59/ITC(PN) 90-93 dated 07.09.1990 and Notification No.169/90 Customs dated 03.05.1990.

For Appellant .. Mr.S.D.S.Philip
in all W.As

For Respondents.. Mr.Arvind Kumar
for R1 to R3 in all the W.As
Mr.S.Rajasekar for R4 & R5
in all the W.As

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This is the second round of litigation initiated by the appellant despite the earlier order passed in its favour, by which the order dated 31.01.1991 was set aside with a direction to the third respondent to reconsider the matter in the light of the Public Notice No.59/ITC/90-93 dated 07.09.1990. For the sake of convenience, the operative portion of the order passed by the learned single Judge in W.P.No.2243 of 1991 dated 09.11.1998, which has become final inter se parties, is reproduced hereunder:

> "4.A reading of the impugned order shows that the Government while passing the impugned order has not taken into consideration the letter dated 07.09.1990 above cited. In view of the above, it could be said that the action of the respondents in rejecting the applications dated 20.08.1990 and 17.09.1990 made by the petitioner herein for the grant of facility for import of capital goods under concessional rate of customs duty as per the Import Policy 1990-93 cannot be held to be valid. In view of the above, the impugned order is quashed. The respondents are directed to pass orders afresh taking into consideration the Public Notice No.59/ITC/PN/90-93 dated 07.09.1990 within a period of three months from the date of receipt of a copy of this order. With the above observations, the writ petition is allowed. No costs. Consequently, WMP No.3418 of 1991 is dismissed."

2.Notwithstanding the clear direction issued in the order referred supra, by order dated 22.03.2002, the request made by the appellant was once again rejected, placing reliance upon the policy prevailing on that date. This was once again put into challenge before the learned single Judge. Unfortunately, the learned single Judge has dismissed the writ petitions without construing the earlier order passed. Challenging the same, the present writ appeals are filed.

3.We find considerable force in the submission made by the learned counsel appearing for the appellant that the order passed by the learned single Judge in the earlier round of litigation is clear and specific. By the aforesaid order, the third respondent was specifically directed to consider the issue afresh in the light of the Public Notice No.59/ITC/90-93 dated 07.09.1990. What the appellant seeks is the benefits which it is entitled to at the relevant point of time. Therefore, for the aforesaid benefit sought for, the subsequent policy cannot be relied upon. The third respondent has not understood the order passed by the learned single Judge in W.P.No.2243 of 1991. If the contentions of the third respondent are accepted, then there is no need for the learned single Judge to set aside the order passed on the earlier occasion and remit the same to reconsider it in the light of the Public Notice No.59/ITC/90-93 dated 07.09.1990.

4.In such view of the matter, we are of the view that the order of the learned single Judge is also not correct. Accordingly, the order dated 22.03.2002 stands set aside and consequently, the order of the learned single Judge also stands set aside. We once again remit the matter back to the third respondent for fresh consideration. The third respondent is directed to consider the grant of licence to the appellant for the relevant period for which it was sought for and which has been rejected on the earlier occasion in the light of the Public Notice No.59/ITC/90-93 dated 07.09.1990 without reference to any subsequent policy prevailing thereafter. This is for the reason that the third respondent is duty bound to consider the policy which was available at the time of passing the earlier impugned order dated 20.11.1990, which was confirmed by the order dated 31.01.1991 for the relevant period. The aforesaid exercise will have to be done within a period of eight weeks from the date of receipt of a copy of this order.

5.With the above observation, these writ appeals stand allowed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Secretary to Government,
Ministry of Commerce,
(Government of India),
Udyog Bhavan, New Delhi - 110 011.

2.The Secretary to Government,
Ministry of Finance,
(Government of India),
North Block, New Delhi - 110 011.

3.The Director General of Foreign Trade,
Ministry of Commerce,
(Government of India),
Udyog Bhavan, New Delhi - 110 011.

4.The Commissioner of Customs,
Customs House, Rajaji Salai,
Chennai - 1.

5.The Assistant Commissioner of
Customs, Customs House,
Rajaji Salai, Chennai - 1.

+1cc to Mr.S.RAJASEKAR, Advocate, S.R.No.53021
+2cc to Mr.SDS.PHILP Advocate, S.R.No.52180

W.A.Nos.2421 to 2425
of 2010

SSV(CO)
TR(21/08/2018)