

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.28851 of 2017

and

W.M.P.Nos.31067 and 31068 of 2017

M/s. Sri Amman Chemicals,
9/22,C.B. Complex,
New Madurai By Pass Road,
L.N.S.(PO) Karur - 639 002.
rep. By its Partner P.Kumaresan ... Petitioner

vs.

1. The Joint Secretary to
Government of India & Appellate Authority,
Ministry of Commerce & Industry,
Department of Industrial Policy & Promotion,
Udyog Bhawan,
New Delhi - 110 002.
2. The Chief Controller of Explosives
Petroleum & Explosives Safety Organization,
"Block, 5th Floor,
CGO Complex,
Seminary Hills, Nagpur,
Maharashtra - 440 006.
3. The Commissioner of Customs,
Chennai III Customs Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai - 600 001.
4. The Additional Commissioner of Customs (SIIB)
Custom House,
60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent connected with impugned order No.1 of 2017 dated 08.02.2017 passed by him and to quash the said order, holding the same to have been passed without jurisdiction, contrary to law and in gross violation of the principles of natural justice and consequently direct the 2nd respondent to issue the F-5 licence to the petitioner firm.

For Petitioner : Mr.S.Baskaran

For Respondents: Mr.G.Rajagopal,
Additional Solicitor General
assisted by
Mr.B.Rabu Mahohar,
Central Govt.Standing Counsel
for R1 & R2
Mr.A.P.Srinivas,
Sr.Standing Counsel for R3 & R4.

O R D E R

The petitioner is aggrieved against the order dated 08.02.2017 passed by the first respondent, wherein and whereby, the appeal filed by the petitioner was rejected.

2. The case of the petitioner in short is as follows:

The petitioner is a trader and importer of ammonium nitrate. Before introduction of the Ammonium Nitrate Rules, 2012, import of the ammonium nitrate can be made without licence. However, after introduction of the said Rule, a licence called P-5 licence is required to be issued by the second respondent for import of ammonium nitrate. The petitioner is already possessing P-3 licence to possess and trade the ammonium nitrate. On 05.08.2015, the petitioner made an application before the second respondent for issuance of P-5 licence. On 19.08.2015, the second respondent rejected the application on the reason that the petitioner being an ammonium nitrate trader, import licence cannot be issued to the petitioner under P-5 licence. The petitioner challenged the said proceedings in W.P.No.20826/2016 along with another writ petition in W.P.No.20827 of 2016 challenging the interim suspension of P-3 licence. Though both the writ petitions were dismissed by a common order on 11.08.2016, the Division Bench of this Court, in an order made in W.A.Nos.1067 and 1068 of 2016 dated 19.10.2016, granted liberty to the petitioner to file an appeal before the first respondent herein. Accordingly, the petitioner preferred an appeal before the first respondent challenging the order of the second respondent dated 19.08.2015. The first respondent, by order dated 08.02.2017, impugned in this writ petition rejected the appeal and confirmed the order of the second respondent. Insofar as the suspension of P-3 license is concerned, the suspension was subsequently revoked by the 2nd respondent on 30.03.2017.

3. The respondents filed a counter affidavit disputing the claim made by the petitioner for the grant of P-5 licence.

4. Though the affidavit filed in support of the writ petition and the counter affidavit filed by the respondents traversed the merits of the matter and the rival contentions

of the parties in detail with regard to the present issue in respect of P-5 licence and though the learned counsel for the petitioner and the learned Additional Solicitor General for the respondents also made elaborate submissions in support of their respective parties, this Court, for the reasons stated hereunder, is not inclined to go into those contentions raised on merits and express any view, since this Writ Petition can be disposed of without going into the merits, in view of the fact that the order passed by the first respondent, the impugned order herein, in the considered view of this Court, is a non-speaking one.

5. Heard the learned counsel for the petitioner and the learned Additional Solicitor General appearing for the respondents.

6. I have already expressed that the impugned order of the first respondent is a non-speaking one. The following reasoning and finding would justify my conclusion.

7. Admittedly, the appeal before the first respondent by the petitioner was against the order passed by the second respondent dated 19.08.2015. The said order reads as follows:

"I am directed to inform you that the issue of license in Form P-5 for import of Ammonium Nitrate under Ammonium Nitrate Rules, 2012 is considered only in favor of Ammonium Nitrate users, in the interest of National Security.

You are being the Ammonium Nitrate trader, the subject proposal on import of Ammonium Nitrate cannot be considered in your favor."

8. There is no dispute to the fact that the petitioner has raised very many contentions on facts and law while challenging the order of the second respondent. It is also not in dispute that the petitioner was represented through an Advocate before the first respondent and made his submissions. Likewise, it is also seen that the Joint Chief Controller of Explosives made his submissions before the Appellate Authority. The Appellate Authority has, in fact, narrated the facts which has led to filing the appeal, extracted the rival contentions of the parties in detail, which runs to four pages.

9. However, a careful perusal of the order of the first respondent, impugned in this writ petition, though running to five pages, would certainly indicate that the findings given by the first respondent on the merits of the appeal, are confined to only the last one paragraph, which reads as follows:

A licence in form P-5 is required for import of Ammonium Nitrate. The Appellant had applied for licence for import of

Ammonium nitrate on 5th August, 2015 to Chief controller of explosives. The Chief Controller of explosives vide his letter dated 19th August, 2015 had denied the licence on ground of national security. The Appellant is a trader of Ammonium Nitrate and not an actual user. As per Gazette Notification vide S.O.1678(e) dated 21st July 2011, Ammonium Nitrate is an explosive and regulating import of the same on reasonable grounds including security of the country is justified.

10. There is no dispute to the fact that except the above findings, the first respondent has not dealt with the merits of the matter with the facts and circumstances and given his independent reasonings and findings for rejecting the appeal. In all other paragraphs the first respondent has only extracted the facts, leading to the filing of the appeal and the submissions made on behalf of the appellant and respondent. Thus, it is apparent that the first respondent has simply reiterated the order passed by the second respondent without giving any independent reason or finding, as to how, in the view of the first respondent, the order of the second respondent is sustainable. Needless to say that the first respondent being the appellate authority is also a fact finding authority and thus, he is bound to consider the facts and circumstances and give his own independent reasonings and findings while disposing the appeal. As this Court does not find any such reasoning and finding, it is inclined to set aside the order of the first respondent without expressing any view on the merits of the matter, for reconsidering the appeal once again on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner.

11. Accordingly, the writ petition is allowed and the impugned order of the first respondent is set aside and the matter is remitted back to the first respondent for considering the appeal filed by the petitioner once again on merits and pass orders in accordance with law, after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Joint Secretary to
Government of India & Appellate Authority,
Ministry of Commerce & Industry,
Department of Industrial Policy & Promotion,
Udyog Bhawan,
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 2. The Chief Controller of Explosives
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 4. The Additional Commissioner of Customs (SIIB)
Custom House,
60, Rajaji Salai,
Chennai - 600 001.
- + 1 cc to Mr. B. Rabu Manohar, Advocate SR.61208
+ 2 ccs to Mr.S. Baskaran, Advocate Sr.61542
+ 1 cc to Mr. A.P. Srinivas, Advocate Sr.61711

W.P.No.28851 of 2017

(CS-VIII)
EU(10/09/2018)

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