IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29820 of 2017
and WMP.Nos.32190 and 32191 of 2017

Sri Dhavam Industries,
Represented by its Proprietrix
V.Dhanalakshmi,
276/2B & 2C, Kothankulam,
Rajapalayam - 626 117,
Virudhunagar District. ... Petitioner

Vs.

1.The Zonal Additional Director General
of Foreign Trade,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

2.The Joint Director General of Foreign Trade,
117, K.K.Nagar, Madurai - 625020

3.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order-in-Original No.35/36/21/00256/AM 07 dated 17.04.2015 on the file of the respondent No.2 and Order-in-Appeal F.No.A(04)/Addl.DGFT/ECA/Chen/AM 18/Madurai/227 dated 30.08.2017 on the file of the respondent No.1 and quash the same and consequently direct the respondent No.2 to consider the representation of the petitioner dated 19.12.2016 for regularization of EPCG license as recommended by the respondent No.3 and drop all further proceedings including recovery of penalty.

For Petitioner : Mr.Y.Prakash

For Respondents
R1 and R2 : Mr.J.Madanagopal Rao
R3 : Mr.Syed Nurullah Sheriff

Senior Panel Counsel

O R D E R

Heard Mr.Y.Prakash, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader for the respondents.

2.The petitioner is aggrieved by an order passed by the first respondent rejecting the petitioner's appeal as time barred. The petitioner has a right of appeal as against the order passed by the second respondent in terms of the provisions of the Foreign Trade (Development and Regulation) Act, 1992. (hereinafter referred to as "the Act"). Limitation for filing such an appeal is stipulated under Section 15(1)(b) of the Act and the appeal should be presented within a period of 45 days from the date on which the decision or order is served on the party concerned. Over and above the said period of 45 days, the first respondent has power to condone the delay of 30 days. The petitioner admittedly did not prefer the appeal within a period of 45 plus 30 days and the time expired on 01.06.2015, whereas the appeal was presented only on 18.05.2017. Thus the appeal petition having been filed beyond the condonable period, the first respondent was justified in rejecting the petitioner's appeal petition.

3.The contention of the learned counsel for the petitioner is that paragraph No.5.14 of the Hand Book of Procedures issued by the Director General of Foreign Trade empowers the authority to close the issue in cases of non-fulfillment of export obligation by calling upon the concerned authority to remit the duty with interest and that the petitioner having paid the entire duty with interest in June 2015, it was incumbent on the part of the second respondent to regularize the EPCG license, but no orders were passed. Therefore, the petitioner could not file the appeal in time. This reason assigned by the petitioner is not acceptable as it is seen that the petitioner is aggrieved only by the imposition of penalty. The order-in-original dated 17.04.2015 only pertains to levy of penalty and the question of the authority being compelled to close the case by accepting the duty and interest alone does not arise.

4.Further, as rightly pointed out by Mr.J.Madana Gopal Rao, learned counsel for the respondents 1 and 2, there is no discretion vested with the second respondent in terms of Section 11(2) of the Act which states that the importer shall be liable for penalty of not exceeding Rs.10,000/- or five times the value of the goods in respect of which any contravention is made or attempted to be made whichever is more. Therefore, the question of avoiding the penalty does not arise. Further, as pointed out by the learned counsel for the respondents 1 and 2 though the petitioner wanted to close the matter and pay the duty and interest and expressed willingness to do so by their letter dated 03.11.2014, they did not keep up to their commitment and the payment was effected only on 01.06.2015, that too, after the order-in-original was passed. The above conduct of the importer clearly shows that no indulgence could have been granted to them by the second respondent. Accordingly levy of penalty was justified. Furthermore, the Court exercising jurisdiction under Article 226 of the Constitution of India cannot extend the period of limitation prescribed under the statute.

5.Thus, for the above reasons challenge to the impugned proceedings has to necessarily fail. Accordingly, the writ petition is dismissed. The petitioner is directed to pay the penalty amount as quantified in the order-in-original dated 17.04.2015 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

cse

Sd/-
Assistant Registrar(CCC)

To

1.The Zonal Additional Director General
of Foreign Trade,
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Chennai - 600 006.

2.The Joint Director General of Foreign Trade,
117, K.K.Nagar, Madurai - 625020

3.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

+1cc to Mr.J.Madanagopal Rao, Advocate SR.No.3995 of 2018
+1cc to Mr.G.A.Syed Nurulloh Sheriff*, Advocate SR.No.3783 of 2018

CO
GMD(10/02/2018)