

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.28609 & 28610 of 2013 &
M.P.Nos.1 of 2013 (2 MPs)

M/s. DGM Textiles

Rep. by its Managing Partner Mr.S.Manivannan

27/1-A, Nehru Street

Thaneerpandal Ring Road

15, Velampalayam

Tirupur - 641 652

.... Petitioner in both WPs

vs.

The Assistant Commissioner of Customs (EPCG)

Office of the Commissioner of Customs

Customs House

60, Rajaji Salai

Chennai - 600 001

... Respondent in both WPs

W.P.No.28609/2013: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus, to call for the records of the impugned Detention Notice F. No. S45/438/2002-, dated 22.5.2012, issued by Assistant Commissioner of Customs (EPCG), Chennai seeking to recover alleged Government dues of Rs.86,668/- as confirmed by Order-in-Original No.15686, dated 21.4.2011, against the petitioner and quash the same and to direct the respondent to furnish to the petitioner Order-in-Original No. 15686, dated 21.4.2011 to the petitioner to prefer statutory appeal under the Customs Act, 1962.

W.P.No.28610/2013: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus, to call for the records of the impugned Detention Notice F. No. S45/438/2002-, dated 22.05.2011, issued by Assistant Commissioner of Customs (EPCG), Chennai seeking to recover alleged Government dues of Rs.29,26,868/- as confirmed by Order-in-Original No.15641, dated 21.4.2011, against the petitioner and quash the same and to direct the respondent to furnish to the petitioner Order-in-Original No. 15641, dated 21.4.2011 to the petitioner to prefer statutory appeal under the Customs Act, 1962.

For Petitioner
in both W.Ps : Mr.R.AnishKumar

For Respondents : Mr.S.Rajasekar and
in both W.Ps Ms.R.Hemalatha
Standing Counsel

COMMON ORDER

Heard Mr.R.Anishkumar, learned counsel appearing for the petitioner and Mr.S.Rajasekar and Ms.R.Hemalatha learned Standing Counsels appearing for the respondent.

2. The petitioner has challenged the detention notices issued by the respondent directing the petitioner to pay the duty as quantified in the Order-in-Original Nos. 15686 & 15641, dated 21.4.2011. The said orders have been passed on the ground that the petitioner has not fulfilled the export obligation and therefore, the petitioner would not be entitled to the benefit under EPCG Licence/Authorization issued to the petitioner.

3. The petitioner's case is that no notice was served on the petitioner and the copy of the Order-in-Original was not received by them. In this regard, when a report was sent by the petitioner, the respondent by reply dated 09.01.2013, informed the petitioner that the Order-in-Original has been dispatched on 25.04.2011 and therefore, they cannot provide copy of the same.

4. It may not be necessary for this court to examine the correctness of the stand taken by the petitioner as to whether they have received the Order-in-Original and whether they were put on notice prior to initiation of adjudication proceeding on account of subsequent events. The petitioner has been issued a discharge certificate for discharging the export obligation against EPCG Licence No.3230001332, dated 16.08.2002 and such certificate has been issued by the Joint director General of Foreign Trade, Coimbatore, vide proceeding dated 12.06.2012. Copy of the said certificate has been forwarded to the Assistant Commissioner of Customs, Customs House, Chennai Sea Port. The petitioner vide representation dated 02.07.2013, has brought to the notice of the respondent and requested them to drop the proposal. This representation was followed by another reminder dated 24.07.2013, which was received by the respondent on 25.07.2013 as evidenced by the Department date seal. Thus, on account of the fact that if the petitioner is discharging the export obligation, then the very fact will stand effaced. However, these things to be verified by the respondent.

5. In the light of the above, the writ petition is allowed, the detention notices are quashed and the matters are remanded to the respondent to take note of the petitioner's representation dated 02.07.2013 and 24.07.2013 and pass appropriate orders on merits and in accordance with law. The petitioner is directed to forward a copy of the export obligation discharge certificate as well as copies of the representation along with the copy of this order to the respondent for compliance of this direction. No costs. Consequently, Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

Rj

To

The Assistant Commissioner of Customs (EPCG)
Office of the Commissioner of Customs
Customs House
60, Rajaji Salai
Chennai - 600 00

+2 Ccs to Mr.R. Anish Kumar, Advocate sr 40834(04/09/2018)
+1 CC to Mrs.R. Hemalatha, Advocate sr 41630(04/09/2018)

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SP(13/07/2018)

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