



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.12612 of 2018

and

W.M.P(MD)Nos.11490 and 11491 of 2018

M/s.Rajkamal Textiles,
represented by its
Managing Partner,
C.Rajendran,
S.F.No.238/3, Therku Thottam,
Appanaickenpatti Post,
Sulur (Via),
Coimbatore - 641 402.

... Petitioner

Vs.

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

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

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

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned Order-in-Original No.37/2017, dated 31.01.2017 in C.No.VIII/10/207/2015-Adjn., passed by the second respondent and quash the same and further direct the second respondent herein to rehear and dispose of the same on merits after affording an opportunity of personal hearing and considering EODC already furnished by the petitioner herein.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.R.Aravindan

**ORDER**

By consent, the writ petition is taken up for final disposal.

2. The petitioner was issued with Export Promotion Capital Goods (EPCG) Licence bearing No.3230011443, dated 06.02.2008. The Export Promotion Capital Goods Licence requires that the licensee shall comply with the Export Obligation Performance in order to show that he has complied with the obligations. A letter was issued by the third respondent calling upon him to produce certain documents. In response to the said letter, the petitioner by his reply dated 11.03.2015, produced the required documents fulfilling its export obligations.

3. Thereafter, the respondents have certified that the petitioner had fulfilled his export obligations and issued an Export Obligation Discharge Certificate in terms of para 5.5 of Foreign Trade Policy and para 5.7.1 of Hand Book of Procedures. This was presented before the Assistant Commissioner (EPCG), who in turn, cancelled the Bond/LUT/Bank Guarantee executed by the petitioner, by letter dated 17.02.2016 and it was informed to the Adjudication Section by the petitioner by his letter dated 28.11.2016. However, without advertent to the developments that had taken place, the second respondent issued the show cause notice to the petitioner as if he has not fulfilled the export obligations. Thereafter, the impugned Order-in-Original No.37/2017, dated 31.01.2017 came to be passed by the second respondent. Aggrieved over the same, the petitioner submitted a letter that he has already fulfilled the obligations pursuant to the licence issued to him, but the third respondent had demanded arrears and penalty and redemption fine as the outcome of the impugned Order-in-Original No.37/2017, dated 31.01.2017. Aggrieved thereby, the petitioner is before this Court.

4. I have heard the rival contentions.

5. On a perusal of the materials on record, it is very clear that pursuant to the directions issued by the Department, the petitioner has submitted the ample proof to show that he has fulfilled the export obligations pursuant to the licence granted to him and that is also accepted by the officials of the respondent Department and a Certificate to that effect was also issued. Further, consequent to the certificate issued, the bond/bank guarantee executed by the petitioner was also cancelled.

6. While the matter stood thus, the second respondent without application of mind, had proceeded as if the petitioner has not fulfilled the export obligations and the impugned order came to be passed because of sheer non-application of mind. Therefore, I have no hesitation to set aside the impugned order.

7. Accordingly, this writ petition is allowed and the impugned Order-in-Original No.37/2017, dated 31.01.2017 in



C.No.VIII/10/207/2015-Adjn., passed by the second respondent, is set aside. No costs. Consequently, the connected writ miscellaneous petitions are closed.

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/True Copy/

Sd/-

Assistant Registrar (T&P)

Sub Assistant Registrar

To

- 1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.
- 2.The Additional Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.
- 3.The Assistant Commissioner of Customs (ARC),
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

+1CC to Mr.A.K.Jayaraj, Advocate in SR.No.69500.

+1CC to Mr.R.Aravindhavan Advocate in SR.No.69509.

RSB

DS/SKN-RSK/SAR- 4:13.07.2018: 3P/6C

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