BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.09.2018
CORAM
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.[MD]Nos.15563 to 15566 of 2018
and
W.M.P.[MD]Nos.13978 to 13981 of 2018

1.M/s.Parvenu Industries Ltd.,
Represented by its Chairman / Managing Director,
Shri.A.M.M.Radha Shankar,
No.64, Nethaji Road,
Srivilliputhur,
Virudhunagar District - 626 125.

2.Shri.A.M.M.Radha Shankar, Chairman /M.D.,
M/s.Parvenu Industries Ltd.,
5-A, Vazhaikulam Single Street,
Srivilliputhur - 626 125.

3.Shri.A.Selvam, Director,
M/s.Parvenu Industries Ltd.,
No.81, Kammapatti Nadar Street,
Srivilliputhur - 626 125.

4.Smt.C.Niranchana, Director,
M/s.Parvenu Industries Ltd.,
No.137/1, Rajiv Gandhi Nagar, 7th Street,
Srivilliputhur - 626 125.

5.Shri.S.Jeyashankar, Director,
M/s.Parvenu Industries Ltd.,
No.70A, Ramakrishnapuram,
South Street,
Srivilliputhur - 626 125. : Petitioners in all WPs

Vs.

1.The Joint Director General of Foreign Trade,
Government of India,
Ministry of Commerce & Industry,
Office of the Joint Director General of Foreign Trade,
117, K.K.Nagar,
Madurai - 625 020.

2.The Secretary to Government of Tamil Nadu,
Industries (MIA.2) Department,
Secretariat, Chennai - 600 009.

3.The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur. : Respondents

Writ Petitions 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 culminating in the order-in-original dated 18.04.2017 issued from File No.35/21/040/0006/AM14/485,35/21/040/0056/AM14/472,35/21/040/0067/AM 14/498, 35/21/076/0001/AM14/511, respectively and quashing the same direct the first respondent to consider the documents filed with him for completion of export obligation.

For Petitioner : Mr.S.Murugappan for Petitioner
For Respondents : Mr.H.Laxshmi Shankar-R1
Mr.Jeyakumar,
Additional Government Pleader for R2 &R3

ORDER

All the four writ petitions raise common issues and grounds and therefore, they are taken up together for disposal.

2.The petitioner industry was engaged in the manufacture of Flexible Intermediate Bulk Containers made out of Polypropylene Granules. The containers so manufactured were locally sold as well as exported. The Government of India, Ministry of Commerce and Industries has formulated an export incentive scheme referred to as 'Advance Authorisation Scheme', in terms of which goods required for manufacture of export amenities can be exported duty free. In order to avail the benefits of the scheme, the petitioner had applied to the first respondent and obtained an advance authorisation from the authority in the year 2013, to the extent of value indicated in the order.

3.According to the petitioners, in terms of the authorisation granted, the company imported raw materials required for manufacture of these Flexible Intermediate Bulk containers and also completed the export obligation in full during the period from January 2013 and January 2014. According to the petitioners, the company faced a severe financial loss in 2014 and therefore, the unit had to be closed in August 2014. The electricity supply was also disconnected from 13.10.2014. The petitioner's banks have also issued notices for recovery of dues under SARFAESI proceedings.

4.While matters stood thus, it appears that in 2014, the first respondent had sent notices directing the company to submit proof of its export obligation and the same was forwarded by another communication on 28.02.2017, calling for personal hearing on 25.03.2017. According to the petitioners, since the unit was closed in August 2014 itself, the specific notices issued to the address where the industry was located could not be received or it was received by some person but not brought it to the notice of the management.

5.While so, the first respondent has imposed a levy as indicated in the individual notices dated 18.04.2017, directing the petitioners to pay the penalty for not discharging their obligation under the authorisation scheme. The petitioners claim that the company was not even aware of such proceedings culminating in the levy of penalty against them. Only when the third respondent issued notices on 08.03.2018, seeking to recover the amount under the Revenue Recovery Act, they came to know about the proceedings initiated against the company by the first respondent. By then, the appeal time as provided in the Foreign Trade Development and Recovery Act, 1992 had already expired and even the period of condonation of delay prescribed under the said statute was also over.

6.In these circumstances, the petitioners approached the first respondent to give them opportunity of hearing on 19.03.2018. However, they were informed by the first respondent to approach the appellate authority. In the said circumstances, the petitioners are before this Court challenging the impugned orders dated 18.04.2017.

7.The learned Counsel appearing for the petitioners at the outset would submit that since the unit had been closed from August 2014 itself, the notices which were said to have been sent on behalf of the first respondent had not been received by the company as there was no person available in the address in which the company was located. Therefore, the company was unaware of the proceedings initiated against them.

8.According to the learned Counsel, the company has all the materials to demonstrate before the first respondent about fulfilling their obligations in respect of the authorisation scheme. But, unfortunately, the petitioners were not heard before the impugned orders came to be issued. According to the learned Counsel appearing for the petitioners, none of the notices or communications issued by the first respondent before passing the impugned orders have been received or brought to the notice of the management. According to him, if only the company had knowledge of such proceedings much earlier, it could have immediately participated in the proceedings. Unfortunately, due to lack of communication, the impugned orders came to be issued without the petitioners participating in the proceedings.

9.Learned Counsel appearing for the first respondent would submit that the notices were issued to the petitioner company by speed post and there were entries that the same has been received by the petitioners. But, no material has been placed before this Court in order to prove the service of such notices on the petitioners. According to the learned Counsel for the first respondent, in regard to the same, other notices by the Bank had been received by the petitioners and therefore, the explanation in regard to non receipt of notice is hardly convincing.

10.Although, there is some force in the contention put forth on behalf of the first respondent, unless some material is produced before this Court in substantiating the claim that the notices had indeed been received by the petitioners, this Court cannot accept the submissions made on behalf of the first respondent. On the other hand, the specific case of the petitioners was that the company had not received any notices before the final impugned orders were passed and also before the issuance of notices under Revenue Recovery Act by the third respondent. This is specifically averred in the affidavit filed in support of this petition. Learned Counsel for the petitioners would submit that some notices had been received by the company, only after they came to know about the initiation of proceedings against them. But before they became aware of the proceedings, there was no staff employed in the unit to receive any notices.

11.This Court has considered the submissions of the learned Counsel for the petitioners as well as the learned Counsel for the respondents.

12.From the materials and the pleadings as disclosed in the proceedings, it appears that there is no clinching materials made available before this Court in order to establish the fact of service of the notices on the petitioners. In such situation, there is no reason to disbelieve the submissions made on behalf of the petitioners that the initial notices issued to the company were not received by the company since the company itself had been admittedly closed in 2014 itself. In fact, electricity connection was also disconnected in October 2014. In such event, the petitioners had been denied due participation in the enquiry to put forth the contentions before the first respondent. According to the learned Counsel for the petitioners the company has all the materials to substantiate the claims that they have fulfilled their obligations under the authorisation scheme. Therefore, this Court is of the considered view that the petitioners are to be given one more opportunity for placing any materials in their position to satisfy the first respondent / adjudicating authority in regard to their discharge of obligation under the authorisation scheme.

13.For the above said reasons, this Court remits the matter back to the first respondent for fresh consideration by giving due opportunity to the petitioners. The first respondent is directed to cause notice to the petitioners, call for their explanation and pass appropriate orders. The first respondent is also directed to hold enquiry in this connection by giving a weeks' notice to the petitioners to appear and explain and on such appearance, the first respondent is directed to pass appropriate orders within a period of three [3] weeks thereafter.

14.Since the matter is remitted back to the first respondent for consideration of the entire issue afresh, all the impugned orders are set aside. It is made clear that the petitioner shall co-operate with the enquiry and shall not seek any further time in this regard.

15.The Writ Petitions are disposed of, with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Joint Director General of Foreign Trade,
Government of India,
Ministry of Commerce & Industry,
Office of the Joint Director General of Foreign Trade,
117, K.K.Nagar,
Madurai - 625 020.

2.The Secretary to Government of Tamil Nadu,
Industries (MIA.2) Department,
Secretariat, Chennai - 600 009.

3.The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur.

+4CC to Mr.H.Laxshmi Shankar, Advocate, SR.Nos. 82222,82223,82224, 82225
+1CC to Mr.S.Murugappan, Advocate, SR.No.82131
+1CC to the Special Government Pleader SR.No. 82513

ORDER MADE IN
W.P.[MD]Nos.15563 to 15566 of 2018
04.09.2018

MR
ES/SV/SAR 1/13.11.2018/5P/10C