

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.02.2019

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3324 of 2019

M/s. Sri Balaji Valves Pvt Ltd,
Represented by its Director,
Ms.Abarajitha Manoharan,
No.39-C, MGR Salai, Palavakkam,
Chennai-600041.

...Petitioner

Vs.

1. The Joint Director General of Foreign Trade,
5th Floor, Shastri Bhavan Annexe,
No.26, Haddows Road, Chennai-600006.

2. The Director General of Foreign Trade,
Udhyog Bhawan,
H-Wing, Gate No.2, Maulana Azad Road,
New Delhi-110001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the 2nd respondent to pass orders on merits with respect to review applications dated 23.09.2014 filed by the petitioner against order-in-original dated 04.08.2011 in F.No.04/81/040/00019/AM 02 and Order-in-Original dated 01.10.2012 in F.No.04/21/040/00180/AM 01.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.TV Krishnamachari
Senior Panel Counsel
for Central Government

O R D E R

Mr.TV Krishnamachari, learned Senior Panel Counsel for Central Government takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner seeks for mandamus, directing the second respondent to pass orders on merits with respect to review applications dated 23.09.2014 filed by the petitioner against the Orders-in-Original dated 04.08.2011 and 01.10.2012.

3. The petitioner suffered two orders-in-original dated 04.08.2011 and 01.10.2012 at the hands of the Joint Director General of Foreign Trade, Chennai, wherein and whereby, the said authority found that the petitioner is guilty of violating the conditions of license in question and thereby, liable to penalty, also further, by ordering that no further license shall be issued to the petitioner firm. Challenging those orders, the petitioner preferred two review applications before the second respondent. Those two review applications dated 23.09.2014 were not considered and therefore, the petitioner sought information with regard to the status of those applications. The petitioner was informed through communication dated 27.11.2018 by the Deputy Director General of Foreign Trade & CPIO that the petitioner ought to have filed only an appeal against the orders-in-original and there is no provision of filing review against the Orders-in-Original and therefore, the petitioner has to prefer an appeal before the Appellate Authority against the orders-in-original.

4. The learned counsel appearing for the petitioner submitted that under Section 16 of the Foreign Trade (Development & Regulation) Act, 1962, the review is maintainable before the second respondent against the orders-in-original. In support of such contention, the learned counsel also relied on an order passed by this Court in W.P.Nos.316 & 421 of 2013 dated 02.06.2014.

5. Perusal of the above referred provision viz., Section 16 of the Foreign Trade (Development & Regulation) Act, 1962 and the order passed by this Court in the above writ petitions would show that the reason stated for not considering the review applications cannot be sustained. For clarity, the relevant paragraph Nos.5, 6 & 7 of the order passed in W.P.Nos.316 & 421 of 2013 are extracted here under:

"5. The petitioner, instead of filing an appeal, has filed the review and hence, by order dated 3.12.12, the authority had rejected the review petition by stating that the petitioner had not filed an appeal under Section 15 of the Act and hence the order is sustainable is the contention of the learned counsel for the respondents.

6. For the sake of convenience, the provisions of Section 15 and 16 of the Act are extracted below:-

"SECTION 15. Appeal (1) Any person aggrieved by any decision or order made by the Adjudicating Authority under this Act may prefer an appeal -

(a) where the decision or order has been made by the Director General, to the Central Government;

(b) where the decision or order has been made by an officer subordinate to the Director General, to the Director General or to any officer superior to the Adjudicating Authority authorised by the Director General to hear the appeal, within a period of forty-five days from the date on which the decision or order is served on such person:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the aforesaid period, allow such appeal to be preferred within a further period of thirty days:

Provided further that in the case of an appeal against a decision or order imposing a penalty or redemption charges, no such appeal shall be entertained unless the amount of the penalty or redemption charges has been deposited by the appellant:

Provided also that, where the Appellate Authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose.

(2) The Appellate Authority may, after giving to the appellant a reasonable opportunity of being heard, if he so desires, and after making such further inquiries, if any, as it may consider necessary, make such orders as it thinks fit, confirming, modifying or reversing the decision or order appealed against, or may send back the case with such directions, as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing or imposing a penalty or redemption charges or confiscating goods (including the goods connected with services or technology) of a greater value shall not be made under this section unless the appellant has been given an opportunity

of making a representation, and, if he so desires, of being heard in his defence.

(3) The order made in appeal by the Appellate Authority shall be final.

SECTION 16. Review - The Central Government, in the case of any decision or order made by the Director General, or the Director General in the case of any decision or order made by any officer subordinate to him, may on its or his own motion or otherwise, call for and examine the records of any proceeding, for the purpose of satisfying itself or himself, as the case may be, as to the correctness, legality or propriety of such decision or order and make such orders thereon as may be deemed fit:

Provided that no decision or order shall be varied under this section so as to prejudicially affect any person unless such person -

(a) has, within a period of two years from the date of such decision or order, received a notice to show cause why such decision or order shall not be varied; and

(b) has been given a reasonable opportunity of making representation and, if he so desires, of being heard in his defence".

7. From a reading of the aforesaid sections, it is very clear that appeal and review are independent of each other and even without exhausting the appeal remedy, the petitioner is entitled to file an review. Hence, without going into the merits of the matter, this Court is of the view that the non speaking order dated 03.12.2012, rejecting the review petition filed by the petitioner by stating that the petitioner has not filed an appeal under Section 15 of the Act is unsustainable.

6. In view of the above stated facts and circumstances, this Court is of the view that the review application filed by the petitioner has to be considered by the second respondent on merits and appropriate orders shall be passed accordingly. Thus, this Writ Petition is disposed of, by directing the second respondent to pass orders on the review applications dated 23.09.2014 on merits and in accordance with law, within a period

of eight weeks from the date of receipt of a copy of this order.
No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sni/mk

To

1. The Joint Director General of Foreign Trade,
5th Floor, Shastri Bhavan Annexe,
No.26, Haddows Road, Chennai-600006.
2. The Director General of Foreign Trade,
Udhyog Bhawan,
H-Wing, Gate No.2, Maulana Azad Road,
New Delhi-110001.

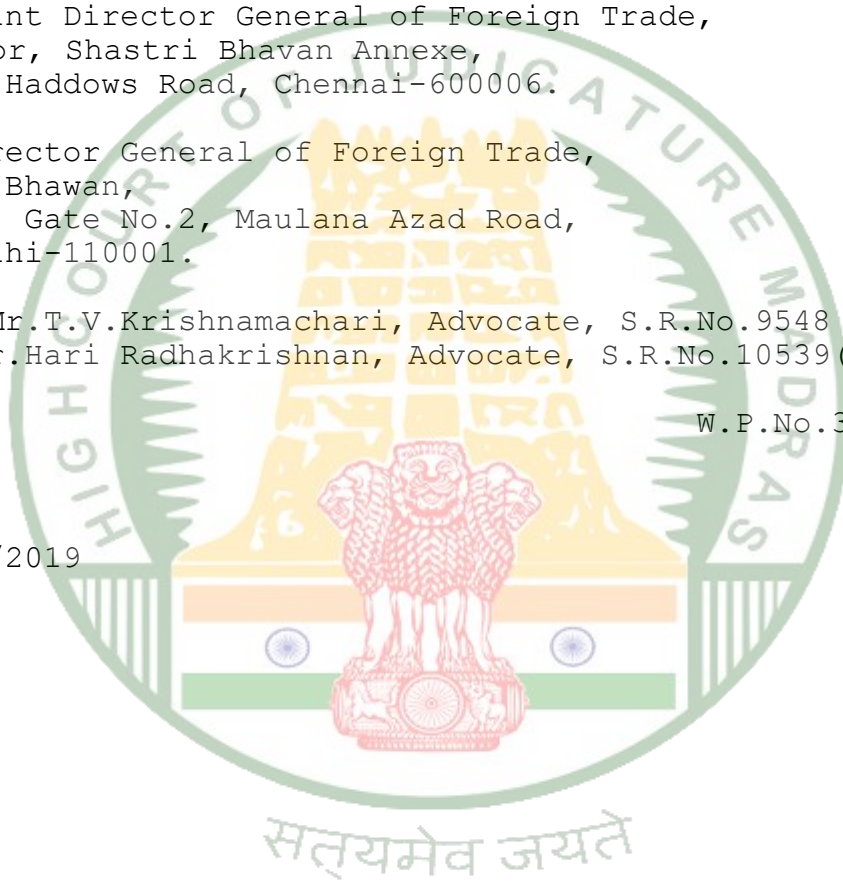
+2ccs to Mr.T.V.Krishnamachari, Advocate, S.R.No.9548

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.10539(20/03/2019)

W.P.No.3324 of 2019

NMI (CO)

rrs 06/02/2019



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