

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.08.2019

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.31102 and 31103 of 2005
and W.P.M.P.No.34085 of 2005

M/s.Green leaf Tobacco Threshers Ltd.,
Post Box No.24,
Tobacco Colony,
Guntur - 522 001.

... Petitioner
in both Writ Petitions

Vs

1. The Assistant Commissioner of Customs,
Group - 7, AIR Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2. The Commissioner of Customs,
Air Port & Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

... Respondents
in both Writ Petitions

Prayer in W.P.No.31102 of 2005: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus calling for the records of the case in impugned Demand Notice in F.No.S45/126/99-EPCG (Gr7-ACC), dated 02.09.2005, issued by the 1st respondent herein for the recovery of the Interest amount and to quash the same.

Prayer in W.P.No.31103 of 2005: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus calling for the records of the case in impugned Demand Notice in F.No.S45/126/99-EPCG (Gr7-ACC), dated 02.09.2005, issued by the 1st respondent herein for the recovery of the Interest amount and to quash the same and consequently direct the 1st respondent to refund the amount of Rs.14 Lakhs recovered by way of encashing the Bank Guarantee executed by the petitioner herein under EPCG Scheme with interest.

For Petitioner : Mr.T.Ramesh, in both writ petitions
For Respondents : Mr.T.PramodKumar Chopda,
Standing Panel Counsel, for R1 & R2,
in both writ petitions

COMMON ORDER

Quoting that the petitioner herein had failed to produce evidence to the satisfaction of the authorities showing the extent of export obligations fulfilled, the present impugned order has been passed for recovery.

2. As per the demand notice, the petitioner, who was the importer, had violated the terms of notification, to produce such evidence within the stipulated time of each block from the date of the license.

3. The learned counsel for the petitioner would submit that though there was a delay in fulfilment of the export obligations, the obligations were duly complied with later and this fact was also brought to the notice of the Joint Director General of Foreign Trade, on 01.09.2005. Since the export policy provides for a discretion to the authorities to ratify such belated fulfilment of export obligations, the respondents ought to have atleast sought for explanation, as to why the demand should not be made, by way of a show cause notice. The fact that the belated fulfilment of the export obligations was brought to the notice of the 2nd respondent is disputed by the learned standing counsel for the respondents.

4. Nevertheless, this fact of belated fulfilment of export obligations is now being brought to the notice of this Court and also in view of the fact that, the petitioner may have a valid objections to the demand made, it would be appropriate to give an opportunity to the petitioner to approach the 2nd respondent, by giving their objections to the present demand notice, which could be treated as a show cause notice.

5. In the light of the above observations, the petitioner herein is granted liberty to approach the 2nd respondent raising its objections to the notice dated 02.09.2005 and with further liberty to submit the details of the fulfilment of the export obligations, within a period of 30 days from the date of receipt of a copy of this order. The 2nd respondent will also be at liberty to seek for any mandatory documents / certificates that may be required for the purpose of considering the petitioner's objections. On receipt of such objections, 2nd respondent herein shall consider the same on its own merits and pass appropriate orders, in accordance with law, after giving a due opportunity

of personal hearing to the petitioner, as expeditiously as possible.

6. In view of passing of this order in W.P.No.31102, no further orders are required in W.P.No.31103 of 2005.

7. Accordingly, the writ petitions stand disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

smv

To

1. The Assistant Commissioner of Customs,
Group - 7, AIR Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2. The Commissioner of Customs,
Air Port & Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

+1 cc to Mr.T.Ramesh, Advocate, S.R.No.66402

+1 cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.65804

W.P.Nos.31102 & 31103 of 2005

KS(CO)
SSM(09/09/2019)

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