IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 38487 of 2005
and
W.P.M.P.41205 of 2005

M/s.Abiq Plastics Pvt. Ltd.,
rep. by its Managing Director
Mrs.V.P.Yasmin,
No.31, Stinger Street,
Chennai-600 108. ...Petitioner

Versus

The Additional Director General of
Foreign Trade,
Directorate General of Foreign Trade,
Department of Commerce,
Ministry of Commerce and Industry,
Government of India,
Udyog Bhavan,
New Delhi-1. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the impugned order in Appeal No.11/223/2004-05/ECA-I dated 14.10.2005 passed by the respondent and quash the same as arbitrary and unjust.

For Petitioner : Mr.S.S.Radhakrishnan

For Respondents : Mr.T.L. Thirumalaisamy,
Central Govt. Standing Counsel

O R D E R

This Writ Petition has been filed challenging the order passed by the respondent imposing penalty of a sum of Rs.57,931/- under Sec. 11(2) of Foreign Trade (Development and Regulation) Act, 1992, (hereinafter called as “Act”).

2. The brief facts leading to the filing of Writ Petition is as follows :-

The petitioner was granted a quantity based advance license for the import of 650 yards of 600D Polyester Nylon with PVC backing, with an export obligation to export the resultant product of 300 covers made of 600D Polyster Nylon with PVC Backing for a free of board value of Rs.79,000/- within a period of one year. Since the petitioner has failed to fulfill the export obligation to export the resultant products within a period of one year, a show cause notice dated 16.07.2002 was issued to the petitioner. But, the petitioner neither given any reply nor appeared for enquiry. Thereafter, the original authority viz., Joint Director General of Foreign Trade, passed an order dated 13.07.2004, thereby imposing penalty of Rs.57,931/-, after forfeiting the bank guarantee given by the petitioner for a sum of Rs. 7,554/- and a personal penalty of Rs.5000/- was also imposed.

3. Challenging the order in original, the petitioner has filed an appeal before the respondent herein and the appellate authority after considering the entire materials, dismissed the appeal, and confirmed the order in original, by an order dated 14.10.2005. Pending appeal, the bank guarantee given by the petitioner for a sum of Rs.32,500/- was forfeited, and the petitioner was directed to pay the balance penalty amount of Rs.30,431/-. Challenging the above said order, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner would contend that, even though the petitioner has imported goods and raw materials under the advance license, after processing, the resultant products could not be exported for various reasons. In the above circumstances, the petitioner was not in a position to fulfill the obligations, and there is no malafide intention on his part. That apart, the learned counsel has further submitted that for failure of fulfilling the export obligations, the respondent has no power to impose penalty on the petitioner. In support of his contentions, the learned counsel has relied upon the judgments reported in 2006 (194) E.L.T. 389 (Del.) and 2011 (273) E.L.T. 198 (Guj.).

5. Per contra, the learned Central Government Standing Counsel would contend that, the quantity based advance license was granted to the petitioner only with the obligation to export resultant products within a period of one year. Admittedly, the petitioner did not fulfill the export obligation, and failed to export the resultant products within a stipulated period. In the above circumstances, a show cause notice was issued, but the petitioner neither given any reply nor appeared for the enquiry.

Hence, invoking Sec.11(2) of the Act, a penalty has been imposed. The Appellate authority also after considering entire materials, dismissed the appeal and confirmed the order passed by the original authority.

6. I have heard and considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Standing Counsel appearing for the respondent and perused the records carefully.

7. It is an admitted case that the petitioner was granted quantity based advance license with an export obligation to export the resultant products within a period of one year. It is also an admitted case that the petitioner has not fulfilled the export obligation. Now, the only contention of the petitioner is that for non-fulfilling the export obligation, the respondent cannot impose penalty on the petitioner. Sec.11(2) of the Act empowers authorities to impose penalty in the event of any contravention of any provision of the Act, which reads as follows:-

> "11. (2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times, the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more."

In the instant case, the petitioner has failed to fulfill the export obligation, thereby violated the license conditions. Hence, the petitioner is liable to pay penalty under Sec.11(2) of the Act, and the contention of the learned counsel for the petitioner cannot be countenanced on this respect.

8. The learned counsel appearing for the petitioner would submit that, pending appeal before the authorities, the petitioner has paid entire customs duty of Rs.20,000/- for the goods imported by him. That apart, pending appeal, as per the order passed by the appellate authority, the petitioner has furnished a bank guarantee for a sum of Rs.32,500/-. After dismissal of appeal, the amount has also been forfeited by the respondent. In the above circumstances, the learned counsel appearing for the petitioner submitted that, the petitioner is involved in the export business for the first time, he is a new entrepreneur, and the petitioner was not fully acquainted with the nature of business, and he has no malafide intention. That apart, the petitioner also suffered huge loss in his business. Hence, the penalty imposed on the petitioner may be modified.

9. Considering the above circumstances, as the petitioner has paid the entire customs duty, and a sum of Rs.32,500/- deposited by the petitioner has been forfeited by the respondent, this Court is inclined to modify the penalty imposed on the petitioner for a sum of Rs.32,500/-. As the petitioner has already paid the penalty, the petitioner need not pay any more amount to the respondent.

10. In the result, the Writ Petition is partly allowed with the above modification. No costs. Consequently, the connected Miscellaneous Petition in M.P. 2 of 2011 is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
The Additional Director General of
Foreign Trade,
Directorate General of Foreign Trade,
Department of Commerce,
Ministry of Commerce and Industry,
Government of India, Udyog Bhavan,
New Delhi-1.

+1 CC to Mr. Hariradha Krishnan, Advocate sr 89423.
+1 CC to Mr.T.L.Thirumalaisamy, Advocate sr 88532.

W.P. 38487 of 2005

SSD(CO)
SP(20/01/2020)