

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2020

Pronounced on : 25.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.38158 of 2003 & 22282 of 2009
and W.M.P.Nos.46325 of 2003, 11233 of 2007

W.P.No.38158 of 2003:

M/s.K.Dhandapani & Co., Ltd.,
Rep.by its Director Kumar K.Swamy,
141, Linghi Chetty Street,
Chennai 600 001.Petitioner

vs.

- 1.Director General of Foreign Trade,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi.
- 2.Deputy Director General of Foreign Trade,
Directorate General of Foreign Trade,
Udyog Bhavan,
New Delhi.
- 3.Foreign trade Development Officer,
Directorate General of Foreign Trade,
Udyog Bhavan,
New Delhi.
- 4.Commissioner of Customs,
Customs House, No.33 (New No.60),
Rajaji Salai, Chennai 600 001.Respondents

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 3rd respondent, culminating in the communication dated 30.10.2003 issued from File No.20/414/95/EPCG-III/5011 and quash the same.

For Petitioner : Mr.S.Murugappan
For R1 to R3 : Mr.N.Rajan SCGSC.,
For R4 : Mr.K.S.Ramasamy. CGSC

W.P.No.22282 of 2009:

M/s.Akber Exports
Represented by its Proprietrix
Ms.N.Shamshad Begum,
243/2D, Kupbandampalayam,
Veerapandi Post,
Tirppur 641 605. ...Petitioner

vs.

- 1.The Director General of Foreign Trade,
Udyog Bhavan,
New Delhi 110 107.
- 2.The Additional Director General of Foreign Trade,
O/o.Director General of Foreign Trade,
Udyog Bhavan,
New Delhi 110 107.
- 3.The Joint Director General of Foreign Trade,
1544, India Life Building (Annexure),
1 Floor, Trichy Road,
Coimbatore 641 018. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to quash the order in Appeal passed by the second respondent in F.No.11/47/08-09/ECA-I/1583 dated 27.11.2008 to the extent of demand of interest.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.K.Gunasekar SPCCG

COMMON ORDER

Common issue that arises for consideration in these two writ petitions are whether the interest which are sought to be recovered from the petitioner can be imposed under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 on account of their failure of the petitioner to fulfill the conditions of Export Promotion Capital Goods scheme licence read with Notification No.160/92-Cus., dated 20.04.1992

issued under Section 25(2) of the Customs Act, 1962. As the issues are common in both the writ petitions, they are being disposed by this common order.

2. In W. P. No.38158 of 2003, the petitioner has challenged the impugned order dated 30.10.2003 from File No.20/414/95/EPCG-III/5011 passed by the the 3rd respondent Foreign Trade Development Officer, New Delhi.

3. By the said order, the 3rd respondent had called upon the petitioner to pay a sum of Rs.6,48,260/- as balance interest on the delayed payment of duty after appropriating the amounts paid by the petitioner on various dates.

4. In W.P.No.22282 of 2009, the petitioner has challenged the order-in-appeal dated 27.11.2008 bearing reference No.11/47/08-09/ECA-I/1583 of the 2nd respondent Additional Director General of Foreign Trade (as an Appellate Authority) under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 against the order dated 13.02.2008 bearing reference F.No.32/95/181/00045/AM05 of the 3rd respondent Joint Director-General of Foreign Trade, Coimbatore.

5. The Joint Director General of Foreign Trade had earlier passed an order dated 13.02.2008 and had imposed a penalty of Rs.1,63,44,084/- on the petitioner in W.P.No.22282 of 2009 under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 pursuant to Show Cause Notice dated 02.05.2005 bearing reference F.No.32/95/181/00045/AM05.

6. By the impugned order dated 27.11.2008, the 2nd respondent Additional Director-General of Foreign Trade (as an Appellate Authority) has partly allowed the appeal by reducing the penalty to Rs.50,000/-, but at the same time has imposed interest at 15% from 16.09.1993 to 31.12.2003 amounting to Rs.5,78,232/- as against the customs duty foregone at the time of import for a sum of Rs.2,52,090/-.

7. In both the cases, the petitioners have imported capital goods on payment of at concessional rate of customs duty in terms of Notification No.160/92-Cus dated 20.04.1992 of the Central Government of India, Ministry of Finance (Department of Revenue), for import of capital goods under the Export Promotion Capital Goods scheme (EPCG). The said Notification was issued to implement the decision of the Government of India, Ministry of Commerce in the Export and Import Policy as in force between 1st April, 1992 and 31st March 1997 announced under Section 5 of the aforesaid Act.

8. Paragraph Nos.102 to 104 of the said Policy read as under

:

102. Before clearance of goods through Customs, the importer shall execute an Indemnity-cum-Surety Bond for fulfillment of the export obligation with the licensing authority in whose jurisdiction the licensee is situated or the Export Obligation Cell in the Office of the Chief Controller of Imports and Exports, Udyog Bhawan, New Delhi. All bonds, after acceptance, shall be transferred to the Export Obligation Cell in the office of the Chief Controller of Imports and Exports, which shall monitor the progress made towards fulfillment of export obligation. The amount of bank guarantee shall be equivalent to the full value of the duty saved through import under this scheme.

103. The EPCG licence holder shall submit, every six months a progress report of his exports, as certified by a chartered accountant, to the Chief Controller of Imports and Exports. Further, for redemption of his Indemnity-cum-Surety Bond, on the completion of his export obligation, he shall submit a consolidated statement of his exports, as certified by a chartered accountant, along with a certificate from his banker, confirming the realization of the export proceeds.

104. Failure to fulfil the export obligation shall entail penal action under the Imports and Exports (Control) Act, 1947, Imports (Control) Order, 1955 and the Customs Act, 1962.

105. In case of failure to fulfil the export obligation, either in full or in part, within the stipulated period, the Indemnity-cum-Surety Bond shall be involved and the bank guarantee shall be enforced. In addition, the licence holder shall also be liable to pay interest at the rate of 24% per annum on the amount of duty saved, from the date of import of the first consignment till the date of payment. This shall be without prejudice to any other action that may be taken under the Imports (Control) Order, 1955 and the Customs Act, 1962.

9. Para- 45 of the said Policy reads as under :

A manufacturer- exporter shall be required to execute with the licensing authority an indemnity-cum-guarantee bond, supported by a bank guarantee, in the specified form for the value and period as mentioned in the licence. However, after the manufacturer-exporter has fulfilled 50% of the export obligation, the licensing authority may discharge the bank guarantee and require the manufacturer-exporter to execute a legal undertaking (LUT) for fulfillment of the remainder of the export obligation. The licensing authority may exempt an Export House/Trading House/Star Trading House from the requirement of furnishing an indemnity-cum-guarantee bond supported by a bank guarantee and may allow it to execute instead a legal undertaking (LUT)

In addition, the license holder was also liable to pay interest at 24% per annum on the amount of duty saved, from the date of import of the 1st consignment to the date of payment. This was without prejudice to any other action that may be taken under the Imports (Control) Order, 1955 and the Customs Act, 1962.

10. In addition, the license holder was also liable to pay interest at 24% per annum on the amount of duty saved, from the date of import of the 1st consignment till the date of payment. This was without prejudice to any other action that may be taken under the Imports (Control) Order, 1955 and the Customs Act, 1962.

11. It is the contention of the petitioners that the levy of customs duty and the interest thereon was under the provisions of the Customs Act, 1962 and the notifications issued thereunder and therefore notwithstanding execution of the bond in terms of paragraph 105 of the Handbook of Procedure, the respondents functioning under the provisions of the Foreign Trade (Development and Control) Act, 1992 have no powers either to collect and demand interest at 24% or 15% as was done in the case of writ petitioner in WP.No.38158 of 2003.

12. It is the contention of the learned counsel for the petitioners that the authorities under the Foreign Trade (Development and Regulation) Act, 1992 do not have power to either collect customs duty or levy interest. The officers under the Ministry of Commerce are not empowered to demand

interest even if the respective petitioners have executed a bond and had undertaken to pay interest at 24% in the event of failure to fulfill export obligation.

13. It is submitted that power to demand interest is substantive and therefore in absence of a provision enabling the respondents to demand interest, such bond cannot be enforced against the petitioners as the bond which has signed was neither contemplated under the Export and Import Policy or under the Foreign Trade (Development and Control) Act, 1992.

14. It is submitted that the Export & Import Policy of the Government, Commerce Ministry merely lays down the broad scheme for granting of exemptions under various schemes announced from time to time. The Central Government in the exercise of its power under Section 25(1) of the Customs Act, 1962 has thought it fit to not to demand interest foregone, even if there was a failure to pay customs duty on due failure to discharge the Export obligation undertaken under the licence.

15. Though, the licenses were granted under the EPCG schemes of the Export and Import Policy, the duty liability and concession are given by the Government of India, Department of Revenue, Ministry of Finance under Notification issued under Customs Act, 1962.

16. It is the case of the petitioners that the Central Government, Department of Revenue, Ministry of Finance in the exercise of power vested with it under Section 25(1) of the Customs Act, 1962 had issued Notification No. 160/92-Cus dated 20.4.1992 for the aforesaid purpose and the said Notification does not contemplate interest in case there was a failure to discharge the export obligation.

17. It is submitted that the importer at the time of clearance of the capital goods under the said scheme was merely required to make a declaration before the Asst. Commissioner of Customs, in such form as he may declaration before the Asst. Commissioner of Customs as the officer may specify, binding upon himself to pay on demand an amount equal to the duty leviable on such capital goods but for the exemption contained therein in respect of which the conditions specified in column (2) of the table were complied with. Text of Notification No.160/92-Cus dated 20.04.1992 reads as under:-

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION
New Delhi, the 20th April, 1992
No. 160/92-CUSTOMS

G.S.R. 423(E).—In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts capital goods, when imported into India by an importer specified in column (2) of the Table hereto annexed from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table and the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, subject to the following conditions, namely :—

(i) the capital goods are imported under, and in accordance with, a licence under the Export Promotion Capital Goods (EPCG) Scheme in terms of the Export and Import Policy (hereinafter referred to as the Policy);

(ii) the importer, at the time of clearance, shall produce to the Assistant Collector of Customs a certificate from the licensing authority for having executed a bond under paragraph 45 of the Policy; and

(iii) the importer at the time of clearance of the said capital goods shall make a declaration before the Assistant Collector of Customs, in such form as he may specify, binding himself to pay on demand an amount equal to the duty leviable on such capital goods but for the exemption contained herein in respect of which the conditions specified in column (2) of the Table have not been complied with.

TABLE

S.No	Description	Rate of duty
(1)	(2)	(3)
1.	Importer undertaking an export valorem obligation equivalent to three times the CIF value of the said capital goods over a period of four years under paragraph 38 of the Policy.	25% ad
2.	Importer undertaking an export valorem	15% ad

obligation equivalent to four times
CIF value of the aforesaid capital
goods over a period of five years
under paragraph 38 of the Policy.

Explanation : In this notification,-

- (i) "capital goods" means any plant, machinery, equipment or accessories required by an importer for manufacture of goods and shall include machinery for packing goods, testing equipment and equipment required for Research and Development activity;
- (ii) "Export and Import Policy" means the Export and Import Policy, 1st April 1992-31st March 1997 published vide Public Notice of the Government of India in the Ministry of Commerce No.1-1TC (PN)/92-97 dated the 31st March, 1992;
- (iii) "Licensing authority" means an authority competent to grant a licence under the Import (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947).

[F. No. B. 31/7/92-TRU]
RAJIV SHARMA, Under Secy.

18. It was further submitted that under the provisions of the Foreign Trade Development And Regulation Act, 1992, the officers are empowered only to impose penalty. They neither have the authority to collect customs duty nor interest and that function is left to the officers under the Ministry of Finance, Department of Revenue under the provisions of the Customs Act, 1962.

19. The learned counsel for the petitioner in W.P.No.38158 of 2003 placed reliance on the following decisions in support of the present writ petitions:-

- i) India Carbon Ltd., Etc vs. The State of Assam, 1997(6) SCC 479
- ii) V.V.S.Sugars vs. Govt. of Andhra Pradesh and Ors, AIR 1999(SC) 2124
- iii) Delta Paper Mills Ltd., vs. Collector of Central Excise, Gunter, 1995 (77) E.L.T. 544 (A.P.)
- iv) The Income Tax Officer, 'A' ward Indore v. Gwailor Rayon Silk Manufacturing (Weaving) Co., Ltd., Birlagram.Nagda, AIR 1976 (SCC) 43

20. The learned counsel for the petitioner in WP.No.22282 of 2009 placed reliance on following decisions rendered by the Tribunal as detailed below:-

- i) Femco Filters (P) Ltd., vs. Commissioner of Customs, Bangalore, 2006 (203) E.L.T.494 (Tri-Bang.)
- ii) FAL Industries Ltd., vs. Commissioner of Customs, Chennai, 2008(231) E.L.T.524 (Tri-Chennai)
- iii) In Re: Vidarbha Veneer Inds.Ltd., 2007(220) E.L.T. 589 (Sett.Comm.)
- iv) Philips (India) Ltd. Vs. Commissioner of Customs , Mumbai, 2001(137) E.L.T.697(Tri-Mumbai)"

21. It is submitted that further appeal against the decision of the Tribunal rendered in Femco Fillers (P) Ltd. supra was dismissed by the Hon'ble Supreme Court in Commissioner of Customs versus Femco Fillers (P) Ltd. 2007 (218) ELT A124 (SC).

22. The learned counsel for the petitioner in W.P.No.22282 of 2009 was fair enough to bring to the notice of this Court to the following decisions of the Honourable Supreme Court and various High Courts and that of this Court which are against the petitioner:-

- i) In Re : SRF Ltd., 2003(158) E.L.T.788 (Sett.Comm.)
- ii) Commissioner of Customs (Sea Port), Chennai vs. S.R.F.Ltd., 2004 (164) E.L.T.412 (Mad.)
- iii) Rexnod Electronics and Controls Ltd., vs. Union of India, 2008(224) E.L.T.184 (S.C)
- iv) Fal Industries Limited vs. Directorate General of Foreign Trade 2014 (306) E.L.T. 58 (Mad.)
- v) Sheshank Sea Foods Pvt.Ltd.,vs. Union of India, 1996 (88) E.L.T.626 (S.C.)
- vi) Pratibha Syntext Ltd., vs. Union of India , 2003(157) E.L.T.141 (Bom.)
- vii) Commissioner of Customs, Hyderabad vs.

Pennar Industries Ltd., 2015(322) E.L.T.402
(S.C.)

viii) Commr.of Cus.(Port) vs. Settlement
Commission, Cus & C.Ex. 2005(179) E.L.T.386
(Cal.)

23. The learned counsel however submitted that while passing the above decisions referred to in paragraph 22 above, the courts have not examined the issue in the light of the decision of the Hon'ble Supreme Court in Carbon Ltd Versus State of Assam, 1997(6) SCC 479 and another decision of the Hon'ble Supreme Court in V.V.S.Sugars versus Government of Andhra Pradesh AIR 1999 (SC) 2124. He submits that the authorities under Foreign Trade (Development and Regulation) Act, 1992, have no powers to demand interest under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

24. It is therefore submitted that the decisions rendered against importers in the cited cases do not constitute a binding ratio decidendi and therefore prayed for allowing the writ petitions. In this connection reference was made to the following decisions of the Honourable Supreme Court:-

- i) Commissioner of Income Tax vs. M/s. Sun Engineering Works (P) , 1992 Supp 1 SCR 732
- ii) Krishena Kumar and Anr. Etc. Etc. vs. Union of India and Ors, 1990 AIR 1782, 1990 SCR (3) 352
- iii) Mohandas Issardas And Ors. Vs. A.N.Sattanathan And Ors. AIR 1955 Bom 113 (1954) 56 BomMLR 1156

25. It was further submitted that Notification No.160/92-Cus dated 20.04.1992 along with host of other Customs Notifications were amended by Notification No.46/2013-Cus dated 26.09.2013 capping the interest payable in case of default to a maximum of the amount equivalent to the duty foregone at the time of import. Similarly, a reference was also made to few other notification which contain a clause for levy of interest and therefore the respondent cannot arrogate upon themselves the power to either demand customs duty or interest on the asking duty forgone.

26. It is therefore submitted that the fact that the Central Government, Ministry of Finance, Department of Revenue for the 1st time amended Notification No.160/92-Cus dated 20.03.1990

along with other notification vide Notification No.46/2013-Cus dated 26.09.2013 shows that the respondents had no power to levy and collect interest in the case of failure to discharge export obligation.

27. Per contra, the respective learned counsels for the respondent Nos.1 to 3 in W.P.Nos.38158 of 2003/W.P.No.22282 of 2009 submitted that the Foreign Trade (Development and Regulation) Act, 1962 and the rules made thereunder and the Export and Import Policy and the Handbook of Procedure and customs Notifications constitute a complete code by themselves and therefore it is not open for a manufacturer exporter like the petitioners availing the benefit of the Export Promotion Capital Goods Scheme to violate the conditions of the license and the bond executed by them in terms of the Export and Import Policy and question the power to demand interest by them. They therefore submit that they are justified in demanding interest.

28. A license holder has to discharge export obligation under the Export and Import policy and in case such holder fails to discharge the export obligation, the license cannot be redeemed and the holder was liable to pay interest until they discharged the export obligation or till the date of payment of the customs duty on account of the failure to fulfill the export obligation and redeemed the licence.

29. The learned counsel submitted that the Ministry of Commerce had in fact issued Public Notices No.22 (Re-2003)/2009-2014 dated 12.08.2013 to facilitate importers like the petitioners to regularise the default by capping the interest payable to proportionate duty on the unfulfilled portion of the export obligation as a trade facilitation Notification No.46/2013-Cus dated 26.09.2013 was also issued by Central Government under section 25(1) of the Customs Act, 1962.

30. The respective counsels for the respondent Nos.1 to 3 in either of the two writ petitions have further submitted that Rule 6(2)(b) of the Foreign Trade Development (Regulation) Rules, 1993 as it stood during the relevant period stipulated that the goods covered under the license shall not be disposed of except in accordance with the provisions of the Policy or in the manner specified by the licensing authority in the license and that a licence was required to execute a bond for complying with the terms and conditions of the license.

31. Learned counsel for the customs department relied upon the decision of the Honourable Supreme Court in Union of India

Versus Madras Steel-Re-Rollers Association 2012 (278) ELT 584 (S.C) to state that the officers of the Ministry of Commerce are bound by the circular/public notices issued by the Department and therefore the respondents were justified in demanding interest.

32. The learned counsel for the Customs Department (4th respondent in W.P.No.38158 of 2003) also drew attention to Public Notice No.05/(Re-99)/1997-2002 dated 06.04.1999 of the Ministry of Commerce, wherein the period to discharge export obligation was extended to 31.03.2001 the licence holder who had failed to discharge the export obligation could apply for extension of the export obligation on submission of bank guarantee covering the customs duty in proportion to the unfulfilled portion of export obligation together with 24% simple interest thereon from the date of import upto 30.09.2001. It was therefore submitted that the petitioners failed to avail the opportunity and were bound to pay interest on the customs duty proportionate to the unfulfilled portion of the export obligation.

33. The learned counsel for the respondent in (4th respondent in W.P.No.38158 of 2003) drew my attention to the decision of the Delhi High Court in DSJ communications vs. UOI rendered in W.P.No.934/2010 wherein para 14, the Court held as under :-

14. Although, a period of fourteen and a half years has lapsed, since the petitioner imported the capital goods, the petitioner has failed to show any significant exports. In the given circumstances, the decision of the respondents to reject the petitioner's plea for further extension cannot be faulted. The EPCG Committee in its meeting held on 12.11.2009 had considered the fact that the petitioner had not made any exports during the past fourteen and a half years and thus, their submission that they would fulfill the export obligations were not convincing. The denial of petitioner's request to include an alternate export product of "Cut and Polished Diamonds" and grant a further extension was thus rejected and in my view, rightly so. It is also material to note that even in cases of sick companies the Foreign Trade Policy did not envisage an extension of period beyond twelve years and in the instant case, the petitioner had not made any exports.

34. I have considered the submissions of the learned counsel for the petitioner and the respondents.

35. In W.P.No.38158 of 2003, the petitioner had imported capital goods in the year 1995 while the petitioner in W.P.No.22282 of 2009 had imported capital goods in the year 1992.

36. Both the writ petitioners had availed the benefit of Customs Notification No.160/1992-Cus dated 20.04.1992 at the time of import of the capital goods under the Export Promotion Capital Goods (EPCG) scheme announced under the Export and Import Policy 1992-1997.

37. Both the importers executed bond/undertaking to pay interest at 24% in case they failed to discharge export obligation or violate the conditions of the license. The license itself contemplates that an importer has to execute a letter of undertaking and bond as per para 102 of the Handbook of Procedure as amended from time to time with respect to export obligation.

38. The licenses were issued in terms of the said Policy and the Policy mandated that the petitioners had to execute a bond in terms of the Handbook of Procedure. Thus, having taken advantage of the scheme, it is not open for the petitioners to state that the respondents have no power to demand customs duty and/or levy of interest thereon.

39. In fact, the custom duty foregone at the time of import was backed with the Bank Guarantee which was also furnished in favour of the licensing authority namely the Director-General of Foreign Trade. The bank guarantee also was invoked by the office of the Director General of Foreign Trade.

40. The background of the facts that in which the above decision came to be rendered has to be kept in mind. The said decision cannot be applied straightaway. While considering the provisions of the Foreign Trade (Development and Regulation) Act, 1992, the Export and Import Policy and the relevant Handbook of Procedures, it has to be kept in mind that the customs duty under Notification No.160/92-Customs dated 20.04.1992 was issued to implement the Policy.

41. The Notification No.160/92-Customs dated 20.04.1992 was not independent of Export and Import Policy of the Ministry of Commerce. The petitioners having agreed to bind to the conditions of the license issued in terms of the Foreign Trade (Development And Regulation) Act, 1992, the Export and Import

Policy and the relevant Handbook of Procedure the Foreign Trade (Development And Regulation) Act, 1992 cannot approbate and reprobate. Therefore, it is not open for the petitioners to state that the Officers of the Ministry of Commerce have no power to levy of interest.

42. The decision of the Honourable Supreme Court in the case of Indian Carbon Ltd versus State of Assam AIR 1997 SC 3054 is not applicable to the facts of the present cases inasmuch as there the court held that "there is no substantive provision in the Central Act requiring the payment of interest on Central sales tax."

43. The appellants therein were a manufacturer and seller of petroleum coke a declared under goods by Section 14 of the Central Sales Tax Act, 1956. The appellants were liable to pay Central sales tax on the petroleum coke on inter-State sales. However, the appellant delayed in payment of tax, the Assessment Years 1974 to 1980 and was therefore called upon to pay interest at the rate of 24% per annum thereon, in purported exercise of the provisions of Section 35-A of the Assam Sales Tax Act, 1947 (17 of 1947). It was in the said background, the said decision was rendered.

44. Though not cited, it is noticed that this issue has already already answered by the Honourable Supreme Court in Rexnord Electronics and Controls Limited Vs. Union of India and Others, (2008) 12 SCC 156, wherein the Honourable Supreme Court has framed the following question:-

16. The core question which, therefore, arises for consideration is as to whether the term "interest" used therein would include within its fold interest payable under the bond furnished by the appellant before the Director General of Foreign Trade.

45. In the above judgment, the Honourable Supreme Court has held as under:-

25. The appellant having evaded payment of duty was bound to pay the same and furthermore was bound to pay interest in terms of the bond executed by it. The Settlement Commission, therefore, could not have given any direction for deduction in regard thereto. As the Settlement Commission, did not have any jurisdiction to waive the amount of interest payable under the bond, we do not see that any jurisdictional error has been committed by it in

directing the payment of the said amount which is otherwise payable. In any event the appellant is not prejudiced thereby as irrespective of such direction, the appellant was bound to pay the interest payable under the bond.

46. In my view, it is not open for the petitioners to state that the respondents had no authority to demand interest on the custom duty foregone even though the petitioners failed to discharge export obligation undertaken by them.

47. In the case of the petitioner in W.P.No. 22282 of 2009 that there was a 27% shortfall in the discharge of export obligation. Accordingly, the petitioner was called upon to pay proportionate customs duty and interest at 15% between 16.9.1993 up to 10.12.2003 even though the petitioner had executed a bond undertaken to pay interest at 24%.

48. As on 11.12.2003, the respondents have arrived as the proportionate customs duty demanded by the petitioner as Rs.2,52,090/- and interest at 15% amounting to Rs.3,86,840/- totaling to Rs.6,38,000,930/- and after adjusting the aforesaid amount by encashing the bank guarantee amounts of Rs.4,10,000/-, the petitioner was called upon to pay the balance amount of Rs. 2,28,930/-

49. In the case of the petitioner in W.P.No.38158 of 2003, the respondents have called upon the petitioner to pay the custom duty foregone at the time of import of capital goods amounting to Rs.11,25,500/- and interest thereon for the period between 03.01.1995 to 15.11.2011 amounting to Rs.18,53,752/-. Accordingly, a demand of Rs.29,78,752/- was made on the petitioner by letter dated 04.12.2001.

50. The bank guarantee furnished by the petitioner in W.P.No.38158 of 2003 was invoked by the respondents on 04.12.2001 for a sum of Rs.9,11,250/- and a sum of Rs.5,62,500/- furnished to the Director General of Foreign Trade. The petitioner therefore requested the respondent to waive the interest. However, the respondents declined to consider waiver of interest as there was no provision for such waiver.

51. The 1st respondent has quantified a sum of Rs.9,97,000/- (4,74,570+ 5,22,430) as interest from the petitioner under the two licenses and after adjusting the amount of Rs.14,73,758/- by encashing the Bank Guarantee, the petitioner has called upon to pay a sum of Rs.6,48,260/- as the balance interest due from the petitioner.

52. When the impugned orders were passed, the Customs Notification No.46/2013-Cus dated 26.09.2013 had not been issued. As per the said notification, in case of default of export obligation, the amount of interest to be paid by an importer shall not exceed the amount of duty if such regularisation has been dealt in terms of public notice of the Government of India, in the Ministry of Commerce No.22 (RE-2013)/2009-14 dated 12.08.2013.

53. Text of the aforesaid public notice reads as under:-

PUBLIC NOTICE No.22(RE-2013)/ 2009-2014 NEW
DELHI, DATED THE 12th August, 2013

Subject: Option to close cases of default in
Export Obligation.

In exercise of powers conferred under Paragraph 2.4 the Foreign Trade Policy, 2009-2014, the Director General of Foreign Trade hereby provides a procedure to close cases of default in Export Obligation under (a) Duty Exemption Scheme (para 4.28 of the HBP vland (b) EPCG Scheme (para 5.14 of HBPv1 RE-2012).

a) All pending cases of the default in meeting Export Obligation (EO) can be regularised by the authorisation holder on payment of applicable customs duty, corresponding to the shortfall in export obligation, along with interest on such customs duty; but the interest component to be so paid shall not exceed the amount of customs duty payable for this default.

[Here is an example: Suppose the default in EO is 100%, this would mean the complete duty saved amount has to be refunded. The interest on this duty saved amount has to be calculated from the date of import till the date of payment. The interest component under this dispensation would be limited to the duty saved amount. If the duty saved amount were Rs. 150, then the interest component would be limited to Rs. 150 and therefore for regularising this case the maximum amount to be paid by the authorisation holder would be Rs.300. However, for the same duty saved amount of Rs. 150, if the default in EO were 30%, then the corresponding duty saved amount becomes Rs. 45 (30% of Rs. 150). Hence

the interest component will be limited to Rs 45. Thus, duty + interest will not exceed Rs. 90 for this regularisation of 30% default in EO for a duty saved amount of Rs. 150.]

(b) In line with the existing policy the customs duty could be paid either in cash or by way of debiting of any valid duty credit scrips issued under Chapter 3 of the Foreign Trade Policy. The interest component however, has to be paid in cash only.

(c) Any authorisation holder choosing to avail this benefit must complete the process of payment on or before 31st March 2014.

(d) Necessary procedures including a system of filing required reports by the respective RAs would be indicated separately.

54. The Ministry of Commerce had considered the difficulties faced by the manufacturer exporters like the petitioners and had therefore over a period of time relaxed the rigours by reducing the interest. Earlier, Public Notice No.5/(RE-99)/1997-2002 dated 06.04.1999 was issued giving an opportunity to persons like the petitioners to regularise the default by extending the period of export obligation upto 31.03.2001 provided applications were made by such manufacturer-exporters within the stipulated time and a bond was executed undertaking to pay customs duty together with 24% interest from the date of import upto 30.09.2001.

55. The Ministry of Commerce later realised the difficulties faced by the importers who availed the benefit of various duty exemption notification. Therefore, paragraph No.2 of Notification No.160/1992-Customs dated 20.4.1992 was amended vide Sl.No.1 to Notification No.46/2013 dated 26.09.2013 which reads as under:-

"2. In case of default in export obligation, when duty on goods is paid to regularise the default, the amount of interest paid by importer shall not exceed the amount of duty if such regularisation has been dealt in terms of Public Notice of the Government of India in the Ministry of Commerce No. 22 (RE-2013) 2009-2014 dated 12th August, 2013."

56. Thus, the petitioners are entitled to reduction of the interest in terms of the policy decision taken by the Ministry

of Commerce in their public notice referred to supra which has also been implemented by the Central Government with the issue of Customs Notification No. 46/2013-Customs dated 26.9.2013.

57. In both the cases, it appears that the bank guarantee furnished by the respective petitioners exceeded the proportionate customs duty payable on the shortfall in export obligation. Thus, the amounts appropriated by the respondents towards the interest cannot exceed the proportionate customs duty on the shortfall in the export obligation. Therefore, the amount of interest payable by the respective petitioners would require for re-quantification.

58. In the light of the above, I set aside the impugned orders and remit the cases back to the original authority namely, the Foreign Trade Development Officer- third respondent in W.P.No.38158 of 2003 and the Joint Director General of Foreign Trade - third respondent in W.P.No.22282 of 2009, the licensing authority to re-determine the interest to be paid by the respective petitioners in terms of Customs Notification No.46/2013-Cus dated 26.09.2013. The amount paid by the respective petitioners and appropriated towards interest shall be given credit while computing at the balance amount to be paid by the petitioner as per the above notification and in case there is any excess payment, is directed to be refunded back to the respective petitioners.

59. Writ Petitions are disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

- 1.The Director General of Foreign Trade,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi.
- 2.Deputy Director General of Foreign Trade,
Directorate General of Foreign Trade,
Udyog Bhavan,
New Delhi.

3.Foreign trade Development Officer,
Directorate General of Foreign Trade,
Udyog Bhavan,
New Delhi.

4.Commissioner of Customs,
Customs House, No.33 (New No.60),
Rajaji Salai, Chennai 600 001.

5.Additional Director General of Foreign Trade,
O/o.Director General of Foreign Trade,
Udyog Bhavan,
New Delhi 110 107.

6.The Joint Director General of Foreign Trade,
1544, India Life Building (Annexure),
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+1cc to Mr.Hari Radhakrishnan, Advocate Sr.15888
+1cc to Mr.K.S.Ramasamy, Advocate SR.16052
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+1cc to Mr.K.Gunasekar, Advocate Sr.15881
+1cc to Mr.S.Murugappan, Advocate Sr.15879

W.P.Nos.38158 of 2003 & 22282 of 2009
and W.M.P.Nos.46325 of 2003 and 11233 of 2007

mp[co]
srg 25/08/2020

सत्यमेव जयते

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