

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.23581 of 2019

M/s.Leo Prime Comp Pvt. Ltd.,
Rep. by its Managing Director Mr.Vasudevan
No.61 & 62, Lakshmanan Nagar
Kandanchavadi
Chennai-6

...Petitioner

Vs.

1.The Union of India
Rep. by its Secretary
Ministry of Commerce
Sastri Bhawan, New Delhi

2.The Joint Director
Director General of Foreign Trade
4th & 5th Floor, Sastri Bhawan annexure
Haddows Road
Chennai-6

3.Foreign Trade Development Officer
O/o. The Additional Director General of Foreign Trade
4th & 5th floor, Sastri Bhawan annexure
Haddows Road
Chennai - 6.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records on the files of the respondent in F.No.04/21/21/1366/AM-12 dated 10.07.2019 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the 2nd respondent to dispose the petitioner application dated 27.06.2019 on merits.

For Petitioner	:	Mr.M.Balasubramanian
For Respondents	:	Mr.Joshua Christie for Mr.V.Chandrasekaran SPC

O R D E R

The petition has been filed in the nature of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in F.No.04/21/21/1366/AM12 dated 10.07.2019 to set aside the same in view of the fact that it has been passed violating the principles of natural justice and to dispose of the application of the petitioner dated 27.06.2019 after giving fair opportunity to the petitioner.

2.The petitioner is a manufacturer of high precision component used in various automobiles sectors and they also manufacture and supply machined and turned ferrous and non ferrous components to automobiles, electricals and electronics (Sub Assemblies to banking automation) Hydraulics, Medical, Power and aerospace sectors. The company was established in the year 1984.

3.It is stated that the importing of capital goods under the EPCG scheme introduced by the 1st respondent viz., The Union of India, Ministry of Commerce, New Delhi. The petitioner claimed that they have completed and fulfilled the export obligations as per the said licence which was granted to import capital goods (Machineries) under the EPCG Scheme. The petitioner needed machineries to increase the production. Therefore, he approached the 2nd respondent for sanction of further licences. The 2nd respondent also issued EPCG licence and allowed to import machineries after due verification.

4.It is stated that there was some delay in repaying the loan i.e. EMI's to the bank. Hence the Bankers declared the petitioner's loan account as non performing asset (NPA) in the year 2014. There was recovery action by the Banker and further owing to natural calamity in the 2015 and 2016, the petitioner was unable to complete the export orders and therefore was not able to fulfill the export obligations within the stipulated period of 6 years. Hence, the petitioner approached the 2nd respondent to extend the EPCG Licence period for export obligations. This was given by the representation dated 27.06.2019 under Section 9(2) of The Foreign Trade (Development and Regulation) Act, 1992. However, the representation had been rejected by the 3rd respondent by the impugned order.

5.A counter had also been filed by the respondents, in which again it had been stated that the petitioner had to comply with the export obligations within the time limit fixed for submission of renewal / extension of licence and only notice was issued and the rejection by the respondent is not final.

6.It is stated that the application was also filed after considerable period of time. It is stated that the writ petition is premature. Further it is stated as follows:

"7. Hence, in the light of the same the department give effective consideration to the request of the petitioner and passed the order dated 10.07.2019 which is not an outright rejection.

8. In the event of the petitioner fulfilling the requirements under the impugned order, his application / representation for extension / Renewal of licence shall be considered in accordance with law for a period of 2 years as the respondents do not have jurisdiction for the period beyond 2 years."

7.However, u/s.9(4) of the Foreign Trade (Development and Regulation) Act, 1992, it had been provided as follows:

"9.(4) The Director-General or the officer authorised under sub-section (2), may, subject to such conditions as may be prescribed, for good and sufficient reasons, to be recorded in writing, suspend or cancel any [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] granted under this Act:

Provided that no such suspension or cancellation shall be made except after giving the holder of the [licence, certificate, scrip or any instrument bestowing financial or fiscal benefits] a reasonable opportunity of being heard.

8.The grievance of the learned counsel for the petitioner is that the petitioner was not offered any opportunity of personal hearing, though the provision u/s.9(4) of the Act extracted above mandates that. It is also stated that the 3rd respondent is not the competent officer to pass the impugned order.

9.In view of these facts, without going into the merits of the case, the impugned order is set aside and the respondents are directed to issue notice to the petitioner in furtherance to his representation dated 27.06.2019, grant personal hearing to the petitioner and examine the records if any produced by the petitioner and thereafter pass order on merits with reasons. The respondents are directed to complete the exercise undertaken by them on or before 28.02.2020.

10.With the above terms, the writ petition stands allowed.
No order as to costs. Consequently, the connected miscellaneous
petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

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+lcc to Mr.V.Chandrasekaran , Advocate SR.No. 1686

+lcc to Mr.D.Vijaya kumar , Advocate SR.No. 1453

gp (CO)
A.SK(04/02/2020)

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