IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13041 of 2013
& M.P.Nos.1 & 2 of 2013

K.R.V. Traders,
By its proprietor,
S.Ravikumar,
R.S.Mill Campus,
67, Thirukovilur Road,
Sankarapuram 606 401. .. Petitioner

Vs.

1. The Union of India,
   Rep. By its Secretary to the Government,
   Ministry of Commerce & Industry,
   New Delhi.

2. The Joint Director General of Foreign Trade,
   No.19-C, 2nd Cross,
   Jawaharlal Nagar,
   Boomiyanpet, Puducherry 605 005,

3. The Additional Commissioner of Customs,
   Air Cargo Complex,
   Menzies Bobba Aviation Terminal,
   Bangalore International Airport,
   Bangalore 300.

4. The Manager,
   Indian Bank,
   Sankarapuram, Villupuram District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, calling for the records of the 2nd respondent relating to the proceedings dated 24.01.2013 bearing File No.25/36/21/08/AM04 and quash the same and consequently, direct the 2nd respondent to consider my request for extension of time for performance of the export obligation.

For Petitioner : Ms.G.Sumithra

For Respondents : Mr.T.V.Krishnamachari
(For R1 & R2)
(Senior Central Government Standing Counsel)

Mr.Vikram Ramakrishnan (For R3)

Mr.Abdul Wahab (For R4)
for M/s.K.V.Subramaniam

ORDER

The order impugned, dated 24.01.2013, passed by the 2nd respondent is under challenge in the present Writ Petition.

2.The petitioner states that its family business is rice milling industry and the father owns a rice mill in Sankarapuram. With a view to diversify the business and export rice, the petitioner started firm with the object to export rice. An export license was also issued in favour of the petitioner on 19.01.2004, by the Foreign Trade Development Officer, Pondicherry. Once the license for exporting is granted, the petitioner is bound by the provisions of the Act as well as the Regulations issued thereon. Admittedly, the export obligations also stipulated and the period from the date of issue of licence the obligations were fixed. The relevant clause of declaration and agreement reads as under:

> "1.We hereby undertake to prove to the satisfaction of the Deputy Commissioner of Customs that the Capital Goods Imported, assembled or manufactured are installed in the Importer's factory and a certificate from the Jurisdictional Asst. Commissioner of Central Excise is produced within six months from the date of completion of importer or within such extended period as the said Deputy commissioner of Customs may allow.
>
> 2.We hereby undertake to fulfill the export obligation equivalent to eight times the duty saved on the goods imported or for such higher sum as may be fixed by the Licensing authority with in a period of Eight Years from the date of issue of the said Licence in the following proportions:

Sl. No.	Period from the date of Issue of Licence	Proportion of total export obligation
1.	1st Year - 2nd Year	Nil
2.	3rd Year - 4th Year	15%

Sl. No.	Period from the date of Issue of Licence	Proportion of total export obligation
4.	5^{th} Year - 6^{th} Year	35%
5.	7^{th} Year - 8^{th} Year	50%

> Provided that export obligation of a particular year may
> be off by the excess exports made in the preceding year."

2.Admittedly, the petitioner could not able to fulfill the export obligations as the petitioner has contended there was a ban imposed on 15.10.2007, which was in existence till the year 2011. Thus, the petitioner could not able to fulfill the export obligation and therefore, the respondents have to give some concessions. The learned counsel for the petitioner made a submission that the petitioner sent a representation to the respondents in the year 2013 itself, which was not considered.

3.This Court is of the considered opinion that the export obligations declared were agreed by the petitioner. When the export license was granted pursuant to the declaration and agreement, the petitioner is bound to fulfill the same and in the event of any difficulty or other grievances, he has to approach the competent authorities and the High Court cannot dilute or grant any relief with reference to the agreed export obligations.

4.The learned Senior Central Government Standing Counsel appearing on behalf of the respondents 1 and 2 made a submission that the writ petitioner is not entitled for any relief as the petitioner had failed to fulfill the export obligations as agreed and therefore, the Writ Petition is to be rejected.

5.In respect of the said contentions, the averments in paragraph Nos.11 to 13 of the counter affidavit filed by the respondents 1 and 2 are relevant, which all are extracted hereunder:

> "11.The above act of the 1^{st} respondent has resulted in revenue loss to the country. The only option left with the 1^{st} respondent as of now is to find resource to a non-penal mechanism provided under the Foreign Trade Policy and Procedures as laid down in Para 5.14 of HBP. Under the scheme, the 1^{st} respondent can pay the Customs duty plus interest and get themselves absolved of the default of non fulfilling the export obligation undertaken by them. The Customs Duty plus interest works out to Rs.4,21,595/-. In case the 1^{st}

respondent does not pay the duty plus interest as required under the provisions of Foreign Trade (Development & Regulation) Acct, 1992, 2nd the petitioner would be constrained to by way of imposition of penalty which would amount to a maximum of 5 times of the duty saved amount plus interest.

12.As regards the averments of the 1st respondent that their export product i.e Non-Basmati Rice was banned in 2007, it is submitted that the ban for export of rice was lifted during 2011. As a matter of fact the 1st respondent had not even fulfilled the exports obligation from the date of import of the machinery prior to the ban i.e. 2004 to 2007 and also after lifting of the ban in the year 2011 till date. The Foreign Trade Policy and procedures containing relief mechanism in para 5.11.3 provides for automatic extension of export obligation period for a period of 4 years and few months because of the ban period. The 1st respondent could have sought relief under the automatic mechanism high lighted therein and they can still export and fulfill export obligation the 1st respondent had suppressed above factual and legal position and mis-lead the Court to obtain interim orders. This writ petition filed in the sole aim to evade customs duty plus interest thereby causing revenue loss to the exchequer. Hence, this writ petition itself is liable to be dismissed.

13.In view of the interim order dated 09.05.2013 granted by this Hon'ble Court the 1st respondent has been continuing to evade the customs duty plus interest and causing revenue loss to the exchequer and without fulfilling the export obligation as required under the provisions of the Foreign Trade Policy. It has therefore become just and necessary and to meet ends of justice that the order of interim injunction is vacated and the 2nd respondent is permitted to invoke the Bank guarantee which was furnished by the 1st respondent and lying with the 3rd respondent. Hence, this petition seeking to vacate the order of interim injunction dated 09.05.2013 passed in M.P.No.1 of 2013 is W.P.No.13041 of 2013 pending disposal of the above writ petition."

6. In view of the facts and on account of efflux of time, if any other grievances exist, the petitioner has to approach the

competent authorities and this Court cannot consider the claim of the petitioner, as the petitioner has not established any acceptable ground for the purpose of interference.

Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
   Union of India,
   Ministry of Commerce & Industry,
   New Delhi.

2. The Joint Director General of Foreign Trade,
   No.19-C, 2nd Cross,
   Jawaharlal Nagar,
   Boomiyanpet, Puducherry 605 005,

3. The Additional Commissioner of Customs,
   Air Cargo Complex,
   Menzies Bobba Aviation Terminal,
   Bangalore International Airport,
   Bangalore 300.

4. The Manager,
   Indian Bank,
   Sankarapuram, Villupuram District.

+1cc to Ms.G.Sumithra, Advocate, S.R.No.35702

W.P.No.13041 of 2013

GPL(CO)
CT/17/08/2021