IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.15515 of 2008

J.V.H.Met-Cult Pvt. Ltd.,
Rep., by its Managing Director,
Mr.J.V.Harinath,
No.4, Pycroft Garden Road,
Chennai-600 006. .. Petitioner

-vs-

1.The Grievance Redressal Committee,
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi.

2.Director General of Foreign Trade,
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi.

3.Export Promotion Capital Goods Committee,
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi.

4.The Dy. Director General of Foreign Trade,
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Udyog Bhavan, New Delhi.

5.The Joint Director General of Foreign Trade,
Shastri Bhavan Annexe,
Haddows Road, Chennai-600 006.

6.The Asst. Commissioner of Customs (EPCG),

Custom House, No.60, Rajaji Salai,
Chennai-600 001.

7.The State Bank of India,
Commercial Branch,
1/65A, GST Road, Guindy,
Chennai-600 032. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned decision dated 26.11.2007 of the 3rd respondent herein as communicated to the petitioner vide letter dated 20th December, 2007 bearing reference No.018/717/AM.06/EPCG.II669 by the 4th respondent herein insofar as it seeks to direct the petitioner to pay a composition fee of 2% on the total duty saved for the initial two years general extension and payment of 50% of the duty payable in proportion to the unfulfilled export obligation for subsequent extension of 2 years and accordingly 1/8th proportionate to the unfulfilled export obligation for the remaining 3 months and quash the same with a consequential direction directing the 3rd respondent to issue appropriate instructions to the 5th respondent for issue of "discharge certificate" to the petitioner in respect of EPCG licence No.04500221 dated 18th March, 1997.

For Petitioner	:	Mr.Hari Radhakrishnan
For R6	:	Ms.R.Hemalatha, Senior Standing Counsel
For RR 1 to 5 & 7	:	No appearance

ORDER

The impugned order dated 26.11.2007 passed by the third respondent, communicated to the petitioner vide letter dated 20.12.2007, by the fourth respondent is under challenge in the present writ petition.

2.The impugned order is challenged mainly on the ground of imposition of composition fee of 2% on the total duty saved for the initial two years general extension and payment of 50% of the duty payable in proportion to the unfulfilled export obligation for subsequent extension of 2 years and accordingly 1/8th proportionate to the unfulfilled export obligation for the remaining 3 months.

3.The petitioner is a small scale industry incorporated in the year 1996 and is engaged in the manufacture of high-tech metal cutting tools. The petitioner started is commercial production during June-July, 1998. Since the petitioner is a sick industrial unit, the total accumulated loss incurred by the petitioner from the financial year 1998-99 to 2005-06 was Rs.49,73,126/-. The petitioner, thus, entitled for a complete waiver of composition fee and extension of Export Obligation Period under the circumstances till 30.06.2006 as per the provisions of the Foreign Trade Policy 2004-2009 read with Section 11.1 of the Hand Book of Procedure issued under Section 5 of the Foreign Trade (Development and Regulations) Act, 1992 in force.

4.The learned counsel for the petitioner mainly contended that the Public Notice No.9/2002-07, dated 22.05.2013 unambiguously clarifies that bank guarantee is to be furnished for non-fulfillment of export obligation and in the present case, admittedly, such bank guarantee was given by the petitioner. The said public notice nowhere contemplates imposition of composition fee of 2% as charge. In other words, the composition fee, which is not contemplated in the Public Notice dated 22.05.2013, which is sought to be recovered from the petitioner through the impugned order, is impermissible.

5.The petitioner has raised other grounds with reference to certain facts and circumstances and this Court is of the considered opinion that all those grounds are to be raised before the authority competent for re-adjudication, as the very imposition of composition fee itself is not contemplated in the public notice dated 22.05.2013. However, these factual aspects are to be adjudicated with reference to the records available and the mixed question of fact and law are to be adjudicated and findings are to be given. Such an exercise cannot be done by the High Court in a Writ proceedings. Thus, the case is to be remanded back for fresh consideration.

6.Accordingly, the impugned order dated 26.11.2007, passed by the third respondent, communicated to the petitioner vide letter dated 20.12.2007, by the fourth respondent, is quashed and the matter is remanded back to the third respondent for fresh adjudication with reference to the facts and grounds raised by the petitioner, who shall pass orders on merits and in accordance with law by following the procedures contemplated and by affording opportunity to the petitioner.

With the above observations and directions, this writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

abr

To

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Ministry of Commerce and Industry,
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+1 cc to M/s.R.Hemalatha, Advocate Sr.No.30038

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PMK(CO)
SB(20/07/2021)