

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.3591 of 2019 & 9046 of 2020
WMP.No.11004 of 2020

M/s.YSI Automotive India Pvt. Ltd.
No.112, Singadivakkam Village,
Kancheepuram Taluk,
Tamil Nadu-631 561 ...Petitioner in W.P.No.3591 of 2019

M/s.YSI Automotive India Pvt. Ltd.
Rep.by its Managing Director
No.112, Singadivakkam Village,
Kancheepuram Taluk,
Tamil Nadu-631 561 ...Petitioner in W.P.No.9046 of 2020

Vs.

1.Commissioner of Customs,
Chennai IV
Office of the Commissioner of Customs,
Customs House, No.60, Rajaji Salai,
Chennai-600001R1 in both WPs

2.Assistant Commissioner of Customs,
EPCG-EODC,
Office of the Commissioner of Customs,
No.60, Rajaji Salai,
Customs House, Chennai-600001 ..R2 in W.P.No.3591 of 2019

3.Export Promotion Capital Goods (EPCG) Committee,
Rep.by its Chairman,
Director General of Foreign Trade,
Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi-110 011 ..R2 in W.P.No.9046 of 2020

4.Director General of Foreign Trade,
EPCG Committee,
Rep.by its Chairman,
Office of the Director General of Foreign Trade,
Udyog Bhavan, H-Wing, Gate No.2
Maulana Azad Road, New Delhi-110 011
..R3 in W.P.No.3591 of 2019

(R3 in WP.3591/19 impleaded as per order dt 06/06/19 in WMP.No.10499/19 in WP.3591/19)

(Prayer amended vide order dt 06/06/2019 made in WMP.No.4930/19 in WP.No.3591/19 by MSJ)

Prayer in W.P.No.3591 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the 2nd respondent not to enforce the Bond and invoke the Bank Guarantee against the Export Promotion Capital Goods (EPCG) License No.0430007277 dated 08.04.2009 pending decision of the EPCG Committee, Director of Foreign Trade, New Delhi.

Prayer in W.P.No.9046 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus calling for the records of the 1st respondent in the Order-in-Original No.73204/2020 dated 16.01.2020 and quash the same and consequently direct the 1st respondent to amend the shipping bills as per the applications of the petitioner dated 03.09.2019.

For Petitioner :Mr.K.Senguttuvan

For Respondent :Ms.Abarna for

R.Hemlatha

Senior Standing Counsel

for R1 & R2 in W.P.No.3591 of 2019

& R1 in W.P.No.9046 of 2020

Mr.V.Chandrasekara

Senior Panel Counsel

for R3 in W.P.No.3591 of 2019

& R2 in W.P.No.9046 of 2020

C O M M O N O R D E R

The challenge in W.P.No.9046 of 2020 is to an order-in-original dated 16.01.2020 passed by the Commissioner of Customs rejecting the applications filed by the petitioner seeking amendment of its shipping bills dated 03.09.2019.

2. The petitioner had obtained licenses under the Export Promotion Capital Goods (EPCG) Scheme in terms of the Foreign Trade Policy 2009-14 (FTP). This entitled the petitioner to import capital goods at a concessional rate of duty with a condition and obligation attached thereto to export eight times of the duty saved under each license. Admittedly, the export obligation was not complied with within the stipulated period

and an extension was sought in terms of the FTP. An extension was granted for a period of two years.

3. The relevant paragraph of the FTP permits satisfaction of the export obligation either by way of direct export or by way of third party exports in terms of para 5.7.1. It is the petitioners' case that the export obligation has been satisfied by it through a third party, such export being classified as a third party export. Exports have been undertaken through an entity by the name of M/s.Glovis India Ltd. (hereinafter referred to as 'Glovis'). It appears that at the time of export by Glovis, the license number of the petitioner was not mentioned by the exporter and the petitioner has filed four applications, all dated 03.09.2019 before the Commissioner of Customs/R1 seeking amendment of the shipping bills. Inter alia, the petitioner sets out in detail the reasons for which the amendment is sought.

4. The explanation set forth by the petitioner was that it had been supplying components of cars/automobiles manufactured by Hyundai, through Glovis. The licenses had been obtained on the basis of anticipated orders from Hyundai and the petitioner effected supplies of the parts to Glovis, which assembled the same as Completely Knock Down (CKD) kits, for export. The explanation set forth for non-mention of its EPCG numbers on the shipping bills is that the exports of Glovis comprised of supplies from several vendors and supporting manufactures, and hence it was not viable for Glovis to mention each EPCG authorization number in the shipping bills. If this were to be done in each and every case, there would be administrative inconvenience to all parties concerned. Though some explanation has been set forth in regard to the non-mentioning of the EPCG number in the shipping bill, the Assessing Authority has proceeded to reject the request for concessional duty without advertng to the explanation at all.

5. The legal issue to be answered would be whether the mention of the EPCG licence number on the shipping bill was mandatory or whether the petitioner could seek to explain, by virtue of other contemporaneous and supporting evidences, the factum of export. This could be done by the petitioner by any number of methods, including confirmations from Glovis, correspondences and other documents at its disposal, among others. No doubt, it is for the petitioner to establish that its exports through Glovis have, in fact, taken place. However, such opportunity does not appear to have been extended to the petitioner and the first respondent has merely rejected the claim not advertng to this aspect of the matter at all.

6. The scheme provides a concession for exports, either directly or through supporting manufacturer, and this is clear

from para 5.7.1 of the Export Promotion Capital Goods (EPCG) Scheme, that reads as follows:

'5.7.1 EPCG authorisation holder shall export either directly or through third party (s). If a merchant exporter is EPCG authorisation holder, name of supporting manufacturer shall also be indicated on shipping bills. At the time of export, EPCG authorisation No. and date shall be endorsed on shipping bills which are proposed to be presented towards discharge of export obligation.'

7. Para 5.7.1 above, no doubt requires the mention of both the name of the supporting manufacturer as well as the EPCG authorization number on the shipping bill and in this case both are absent. However, in my view, the requirements, though mandatory, are capable of being satisfied constructively as well and non-mention is not fatal to the claim of concessional rate of duty. The provisions of Section 149 of the Customs Act provides a forum to the petitioner to establish this by way of contemporaneous records. Thus, an opportunity must be extended to the petitioner to prove the factum of export through Glovis by way of supporting materials. The burden is, no doubt, heavy and it is for the petitioner to produce material before the authorities to discharge such burden. However such opportunity in my view should be read into the provisions of para 5.7.1 to ensure that genuine and bonafide cases of supporting manufacturers are not denied the benefit of concessional duty.

8. The impugned order is a non-speaking order that has not adverted to the justification put forth by the petitioner and is hence set aside. The petitioner will appear before the Commissioner of Customs i.e. R1 on Wednesday the 12th of May, 2021 at 10.30 am without awaiting any further notice in this regard and R1 shall, after hearing the petitioner and considering any material that may be furnished by the petitioner in support of its stand, pass a speaking order on the applications within a period of four weeks from 12.05.2021, on merits.

9. The petitioner had, initially, approached the EPCG Committee for relaxation of the export condition, which request came to be rejected by the Policy Relaxation Committee. A review application was filed which has also come to be rejected by order dated 11.08.2020. This position may not be very material to the issue to be decided in this writ petition and is stated only incidentally, as finally, if the order of the Assessing Authority under the Customs Act, impugned in this writ petition is reversed, consequence will be given by the 2nd respondent. W.P.No.9046 of 2020 is allowed.

10. The prayer in W.P.No.3591 of 2019 is for non-invocation of a bank guarantee against EPCG license dated 25.09.2007, pending decision of the EPCG Committee for relaxation of the policy. Admittedly, the request before the Policy Relaxation Committee has been rejected despite which the petitioner, states that the bank guarantee has not been invoked, thus far. In view of my order in W.P.No.9046 of 2020, setting aside the impugned order and directing the Customs Authorities to pass orders within four weeks from 12.05.2021, let the bank guarantee not be invoked till such time a decision is taken de novo by R1 and subject to the same.

11. W.P.No.3591 of 2019 is disposed in the above terms. Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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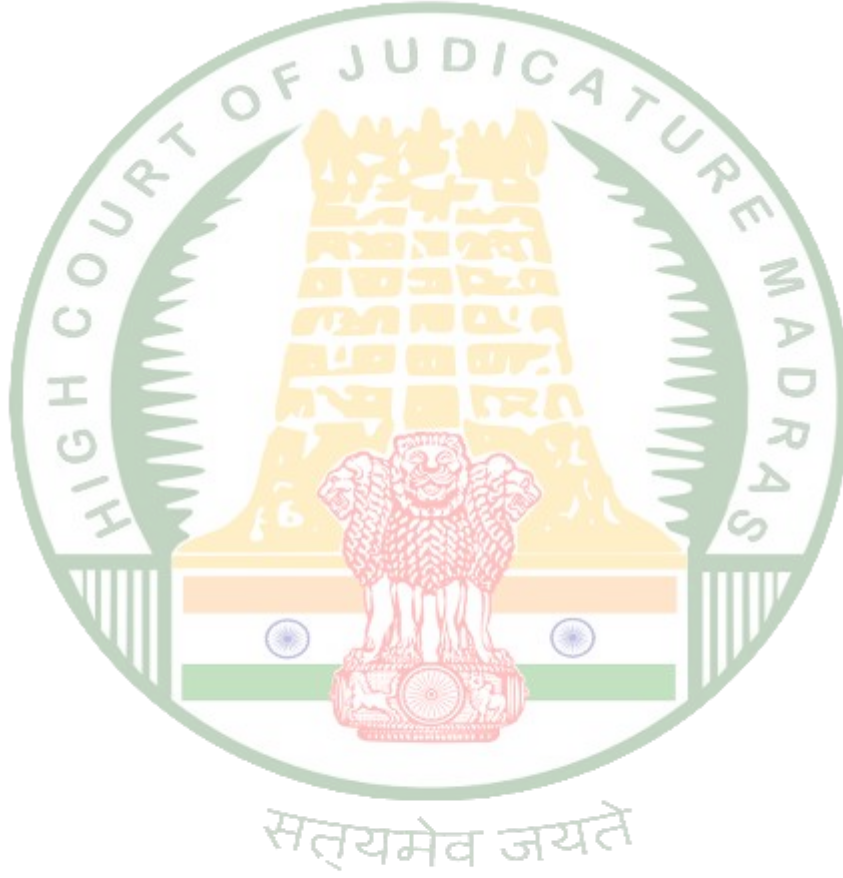
To

- 1.The Commissioner of Customs,
Chennai IV
Office of the Commissioner of Customs,
Customs House, No.60, Rajaji Salai,
Chennai-600001
- 2.The Assistant Commissioner of Customs,
EPCG-EODC,
Office of the Commissioner of Customs,
No.60, Rajaji Salai,
Customs House, Chennai-600001
- 3.The Chairman,
Export Promotion Capital Goods (EPCG) Committee,
Director General of Foreign Trade,
Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi-110 011
- 4.The Chairman,
Director General of Foreign Trade,
EPCG Committee,
Office of the Director General of Foreign Trade,
Udyog Bhavan, H-Wing, Gate No.2
Maulana Azad Road, New Delhi-110 011

+1cc to Mr.V.Chandrasekaran, Advocate SR.26508
+1cc to Mrs.R.Hemalatha, Advocate, SR.26467

W.P. Nos.3591 of 2019
& 9046 of 2020
WMP.No.11004 of 2020

PP(CO)
CB(06/07/2021)



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