IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.27830 of 2015
and
M.P.No.1 of 2015

M/s.R.Stahl (P) Ltd.,
Represented by its Manager - Logistics,
Mr.S.Hariharan,
Plot No.5, Malrosapuram Main Road,
Sengundram Industrial Area,
Singaperumal Koil, Malrosapuram Post,
Kancheepuram District - 603 204 ...Petitioner

Vs.

1. Director General of Foreign Trade,
Ministry of Commerce and Industry,
Udyog Bhawan, New Delhi - 110 011.

3. Additional Director General of Foreign Trade,
Ministry of Commerce and Industry,
Udyog Bhawan, New Delhi - 110 011.

3. Joint Director General of Foreign Trade,
Ministry of Commerce and Industry,
Shastri Bhawan Annexe, 4th Floor,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006.

4. Deputy Director General of Foreign Trade
Ministry of Commerce and Industry,
Shastri Bhawan Annexe, 4th Floor,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus, calling for the records of the second respondent culminating in the Order in Appeal dated 05.06.2015 issued from F.No.11/37//2010-11/ECA-1 by quashing the same and directing the second and third respondents to issue redemption certificate based on the documents provided to them under cover of their letter dated 11.06.2001.

For Petitioner : Mr.S.Murugappan
For Respondents : Mr.Venkataswamy Babu, SPC

ORDER

This Writ Petition has been filed challenging the Order in Appeal dated 05.06.2015 passed by the first respondent confirming the order of the Original Authority dated 25.05.2010 passed by the fourth respondent.

2. The case of the petitioner is that the supply made by the petitioner to M/s.Reliance Petroleum Limited is a deemed export. According to them, they were issued two special imprest licences for supply of goods under 'deemed exports' scheme, which are as follows:-

Licence Number 4014306 dated 15.12.1998
Licence Number 0410000162 dated 02.07.1999.

3. Under the Deemed Export scheme of the Central Government, the petitioner is exempted from payment of customs duty, as per the Customs Notification No.36 of 1997 dated 11.04.1977 whenever the supply has been effected for new refinery projects. It is the case of the petitioner that the subject supplies effected by the petitioner to M/s.Reliance Petroleum Limited for their project at Gujarat is a new refinery project and hence, the exemption granted under the Customs Notification No.36 of 1997 dated 11.04.1977 is applicable to them. However, according to the petitioner, under the order dated 25.05.2010 passed by the fourth respondent as well as the Order in Appeal dated 05.06.2015 passed by the second respondent, arbitrarily and by total non-application of mind, both the authorities have held that the supplies effected by the petitioner are for expansion or upgradation of refinery projects and hence, the petitioner is not exempted from payment of customs duty. Aggrieved by the orders passed by the second respondent and the fourth respondent, this Writ Petition has been filed.

4. A counter affidavit has been filed by the respondents reiterating the contents of the order dated 25.05.2010 passed by the fourth respondent as well as the order dated 05.06.2015 passed in the Order in Appeal by the second respondent by stating that the supplies effected by the petitioner have been made only for expansion or upgradation of M/s.Reliance Petroleum Limited and therefore, according to them, the said supplies are not for new refineries, for which alone, there is an exemption

from payment of customs duty as per the Customs Notification dated dated 11.04.1977. They have relied upon the Department of Economic Affairs, New Delhi letters dated 17.02.1999, 07.07.1999, 10.04.2002 and 21.03.2002 and would submit that as per the said letters, the petitioner is not eligible for exemption from payment of customs duty, as the supplies effected by them to M/s.Reliance Petroleum Limited are not for new refineries, but only for expansion of M/s.Reliance Petroleum Limited. According to them, the petitioner is not entitled for exemption and hence, the orders passed by the authorities below are correct.

5. Heard Mr.S.Murugappan, learned counsel for the petitioner and Mr.Venkataswamy Babu, learned Senior Panel Counsel appearing for the respondents.

6. The learned counsel for the petitioner drew the attention of this Court to the letters issued by the Department of Economic Affairs, which the respondents are relying upon to dis-entitle the petitioner from claiming exemption from payment of customs duty. According to him, by total non-application of mind to the date of supplies effected by the petitioner, the said letters have been issued by the Department of Economic Affairs. The learned counsel for the petitioner would submit that the supplies were effected by the petitioner only during the years 1998 and 1999 (i.e) during the 9th plan period only, which is between 1997-2002. Under the letters issued by the Department of Economic Affairs, they have observed that the exemption benefits cannot be given with the retrospective date, since the letter of intent was issued in the year 1992. The learned counsel for the petitioner also drew the attention of this Court to the letter of intent issued in favour of the petitioner in the year 1992, which will clearly establish that the supplies to be effected by the petitioner are only for a new refinery project. No contra evidence has been placed either before the authorities below or before this Court by the respondents to disprove the contention of the petitioner that the supplies were effected only for a new refinery project, that was established only during the 9th plan period (i.e) between 1997 - 2002. The learned counsel for the petitioner also drew the attention of this Court to the Department of Industrial Department-Secretariat for Industrial approvals' letter dated 30.09.1994, which the respondents have relied and would submit that it only reveals that the capacity of the proposed refinery is increased from 9 million tonnes per year to 15 million tonnes. According to him, the enhancement in the installed capacity is for the proposed refinery and not as an expansion for an existing refinery. Therefore, according to him, the

supplies effected by the petitioner are not for an expansion project, but for setting up a new refinery project during the 9th plan period. The learned counsel for the petitioner also drew the attention of this Court to the project authority certificate and would submit that it clearly reveals that the refinery project is being set up only during the 9th plan period. The learned counsel for the petitioner also drew the attention of this Court to the supplies made by the petitioner under the second licence issued subsequently during July 1999 for the very same project, which was accepted by the respondents and the petitioner was also granted exemption from payment of customs duty under the subject Customs Notification. According to the learned counsel for the petitioner, by total non-application of mind, the second respondent as well as the fourth respondent have not granted exemption to the petitioner from payment of customs of duty under the 'Deemed Exports' Scheme of the Government of India.

7. Per contra, Mr.Venkataswamy Babu, learned Senior Panel Counsel appearing for the respondents would submit that the letter of intent was issued to the petitioner in the year 1992 during the 9th plan period, but whereas the supplies were effected by the petitioner during the 9th plan period. He would rely upon paragraph 10.11 of the Hand Book of Procedures, 1997-2002 amended upto 1998 for grant of licence. According to him, as per the said procedure, which is meant for the 9th plan, cannot be extended to a project of the 8th plan. He then drew the attention of this Court to Paragraph 6 of the counter affidavit filed by the respondents and would submit that in view of the letters of the Department of Economic Affairs dated 17.02.1999, 07.07.1999, 10.04.2002 and 21.03.2002, the petitioner is not eligible for deemed export benefits.

DISCUSSIONS:

8. As seen from the order dated 25.05.2010 passed by the fourth respondent as well as the order in Appeal dated 05.06.2015 passed by the second respondent, excepting for relying upon clarification letter issued by the Department of Economic Affairs dated 21.03.2002, no other material is available to show that the supplies effected by the petitioner were not effected for the new refinery project.

9. The petitioner has placed before this Court the following documents in support of their case that the supplies effected by them were only for the new refinery project to be set up in the 9th plan period between 1997-2002.

30.09.1994	Letter to convey approval of Government to enhance the capacity of the proposed Oil Refinery
09.08.1996	Letter to convey approval of Government to extend the validity for setting up Oil Refinery for Petroleum Product.
04.11.1998	Project Authority Certificate
17.02.1999	Clarification sent to the 1st respondent by the 3rd respondent.
09.07.1999	Clarification sent to the 1st respondent by the 3rd respondent
16.07.2002	Reply of the 1st respondent for the clarification
11.05.2004	Letter sent to the 1st respondent by the RIL (Reliance Industries Ltd., for commencing the project)

10. None of the aforementioned documents have been considered either by the fourth respondent or by the second respondent, while passing their respective orders, which are the subject matter of challenge in this Writ Petition. The said documents will reveal that the petitioner has supplied only to a new refinery project of M/s.Reliance Petroleum Limited for the 9th plan. In the impugned order, as observed earlier, excepting for relying upon the clarification issued by the Department of Economic Affairs, Government of India, the documents placed before this Court by the petitioner have not been considered by the respondents. As seen from the impugned orders, without any basis, just based on the Department of Economic Affairs Clarification, the respondents have rejected the petitioner's claim for Customs duty exemption under the Notification dated 13.06.1997 issued by the Ministry of Finance (Department of Revenue). Hence, this Court is of the considered view that the impugned orders, namely, the order in appeal passed by the second respondent dated 05.06.2015 as well as the order of the Original authority dated 25.05.2010 passed by the fourth respondent have been passed by total non-application of mind to the documents produced by the petitioner. Hence, the impugned orders passed by the second respondent dated 05.06.2015 as well the order dated 25.05.2010 passed by the fourth respondent will have to be necessarily quashed and the matter remanded back to the original authority, namely, the fourth respondent for fresh consideration on merits and in accordance with law.

11. In the result, the impugned orders dated 05.06.2015 passed by the second respondent as well as the order dated 25.05.2010 passed by the fourth respondent are hereby quashed and the matter is remanded back to the fourth respondent for fresh consideration and the fourth respondent shall pass final orders on merits and in accordance with law, after giving due consideration to the documents filed by the petitioner before this Court and also after granting the petitioner the right of personal hearing, within a period of four months from the date of receipt of a copy of this order.

12. With the aforesaid directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Director General of Foreign Trade,
Ministry of Commerce and Industry,
Udyog Bhawan, New Delhi - 110 011.

3. The Additional Director General of Foreign Trade,
Ministry of Commerce and Industry,
Udyog Bhawan, New Delhi - 110 011.

3. The Joint Director General of Foreign Trade,
Ministry of Commerce and Industry,
Shastri Bhawan Annexe, 4th Floor,
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Chennai - 600 006.

4. The Deputy Director General of Foreign Trade
Ministry of Commerce and Industry,
Shastri Bhawan Annexe, 4th Floor,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006.

+1cc to M/s.S.Murugappan, Advocate, SR.No.16177

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SKY(CO)
KKV/07/04/2021