

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.7813 of 2021 &
W.M.P.No.8340 of 2021

M/s.Rockhill Granite & Marble Pvt. Ltd.
By Director Sri Subhash Jamad
34, Ormes Road,
Kilpauk,
Chennai - 600 010

..... Petitioner

Vs.

Government of India rep. by its
Deputy Director General of Foreign Trade,
Ministry of Commerce and Industry,
Office of the Additional Director General
of Foreign Trade
Sastry Bhawan,
Haddows Road,
Chennai - 600 006.

.... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to F.No.04/21/021/00106/AM03, dated 04.02.2021 and quash the same and directing the respondent to extend the benefits that are available for the petitioner, pursuant to the petitioner's compliance of export obligation.

For Petitioner :Mr.D. Nellaiappan

For Respondent :Mr.T.L. Thirumalai Samy
Central Govt. Standing Counsel

O R D E R

This writ petition has been filed challenging the order in original dated 04.02.2021 passed by the respondent under section 15 of the Foreign Trade (Development and Regulations Act), 1992 imposing a penalty of Rs.1 crore in addition to the notional customs duty and interest on the petitioner.

2. Heard Mr.D.Nalliappan, learned counsel for the petitioner and Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel for the respondent.

3. The petitioner has primarily challenged the impugned order on the ground of violation of principles of natural justice. It is the contention of the petitioner that without affording personal hearing, the impugned order has been passed. It is also the contention of the petitioner that the respondent under the impugned order has not taken into consideration the steps taken by the petitioner to fulfill the export obligations, despite the fact that documentary proof was submitted by the petitioner to that effect. In the affidavit filed in support of this writ petition, the petitioner has given details of the exports made by him and according to the petitioner, the same was not considered under the impugned order.

4. As seen from paragraph 5 of the affidavit filed in support of this writ petition, the respondent has sent a show cause notice to the petitioner on 19.11.2019 fixing the date of personal hearing as 29.11.2019. According to the petitioner, the said show cause notice dated 19.11.2019 was received by them only on 03.12.2019. According to the petitioner, the second show cause notice dated 09.12.2019 sent by the respondent fixing the date of hearing as 18.12.2019 was also received by the petitioner only on 28.12.2019. Similarly, the third show cause notice dated 14.01.2020 sent by the respondent fixing the personal hearing as 30.01.2020 was received by the petitioner only on 04.02.2020. The petitioner has filed a copy of the postal covers enclosing the aforementioned show cause notices which will reveal that he has received the aforementioned show cause notices only after the date fixed for the personal hearing.

5. However, insofar as the letter dated 31.07.2020 sent by the respondent fixing the personal hearing as 18.08.2020 is concerned, the same was received by the petitioner on 06.08.2020. It is the case of the petitioner that by his letter dated 10.08.2020, they requested the respondent to postpone the date of hearing by another period of sixty days due to the present Covid-19 pandemic situation. According to the petitioner, only one opportunity was granted to them and it is their case that earlier show cause notices sent by the respondents were received by them belatedly i.e., after the date fixed for personal hearing. It is the case of the petitioner that instead of granting time as sought for in their letter dated 10.08.2020 and without affording a fair hearing, the respondent has gone ahead and passed the impugned order dated 04.02.2021 imposing a huge penalty on the petitioner for the alleged non-fulfilment of export obligations.

6. This Court has perused and examined the impugned order. The petitioner has filed the following documents namely (a) EPCG license dated 16.07.2002, (b) Bank Guarantee for Rs.1,30,000/-

extended in favour of the petitioner dated 05.08.2002, (c) letter dated 21.08.2002 sent by the petitioner to the respondent, (d) letter dated 21.08.2002 sent by the respondent to the petitioner permitting the petitioner for indigenous procurement of capital goods, (e) Invoice dated 27.08.2002 for purchase of Hydraulic Excavator PC200, (f) Certificate issued by the respondent for procuring indigenous capital goods and (g) Export document of the petitioner all dated 16.06.2011.

7. As seen from the impugned order, many of the documents that have been filed before this Court by the petitioner, have not been considered by the respondent. A categorical stand has also been taken by the petitioner before this Court that they have fulfilled the export obligations and therefore they are not liable to pay any penalty under the Foreign Trade (Development and Regulations Act), 1992. The respondent has imposed a huge penalty of Rs.1 crore in addition to the notional customs duty and interest on the petitioner.

8. After giving due consideration to the aforementioned factors, this court is of the considered view that the respondent has violated the principles of natural justice by not affording sufficient opportunity to the petitioner to raise all objections available to them under law which they have raised before this Court. No prejudice will be caused to the respondent if the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting them the right of personal hearing.

9. Learned counsel for the petitioner on instructions would submit that the petitioner is willing to go for personal hearing before the respondent on 20.04.2021 without fail. This Court records the undertaking given by the petitioner.

10. For the foregoing reasons, the impugned order dated 04.02.2021 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall afford a fair hearing to the petitioner including granting them the right of personal hearing on 20.04.2021 and permit the petitioner to place documentary evidence in support of their case and pass final orders on merits and in accordance with law within a period of two weeks from 20.04.2021 i.e., the date of personal hearing to the petitioner.

11. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

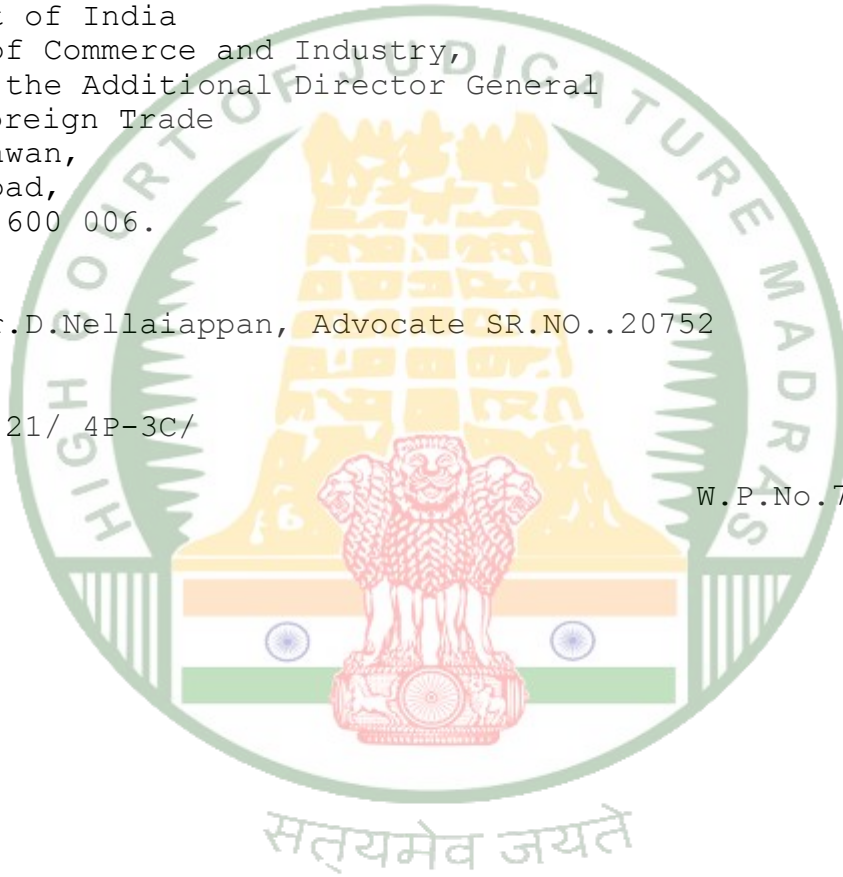
To

The Deputy Director General of Foreign Trade,
Government of India
Ministry of Commerce and Industry,
Office of the Additional Director General
of Foreign Trade
Sastry Bhawan,
Haddows Road,
Chennai - 600 006.

+1cc to Mr.D.Nellaiappan, Advocate SR.NO..20752

AKM/31.03.21/ 4P-3C/

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