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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.39247 to 39252 of 2016 & 29655 of 2017 and

W.M.P.Nos.33603 to 33607, 33609 of 2016 & 31954 of 2017

M/s.Akber Knitting Company
Rep.by its Managing Partner
Shri S.A. Sayeed Nazar
And having its office at,
531, Kupbandampalayam,
Veeranpandi Post, Tirupur - 641 605.

Presently at
20-1, Shri Shivashakti Nagar, 2nd Street,
Rakyapalayam, Tirupur - 641 604. ..Petitioner in all WPS

Vs.

- 1.The Joint Director General of Foreign Trade
1544, India Life Building (Annex.I Floor)
Trichy Road, Coimbatore - 611 018.
- 2.The Deputy Director General of Foreign Trade
1544, India Life Building (Annex.I Floor)
Trichy Road, Coimbatore - 641 018.
- 3.The Foreign Trade Development Officer,
1544, India Life Building (Annex.I Floor)
Trichy Road,
Coimbatore - 641 018.
- 4.The District Collector,
District Collectorate,
Palladam Road, Tiruppur - 641 604.
- 5.The Thasildar,
1/1450 - I, Palavanjipalayam,
Shri Sivasakthi Nagar,
Veerapandi,
Tiruppur South - 641 605.

..Respondents in 1 TO 5 all WPS



6.The Land Revenue Inspector,
(Tirupur South) Inner Circle,
No.8, Tirupur Town, Old market street,
Opp AMR Tower, Tirupur 641 604.

....R6 in WP 29655 of 2017

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Prayer in WP 39247 Of 2017 :Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari call for the records pertaining to impugned recovery notice dated 20.07.2016 issued by the 5th respondent in Na.Ka.No.8105/2015/A2 and quash the same.

Prayer in WP 39248, 39249, 39250, 39251, 39252 of 2016: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari call for the records pertaining to the impugned order dated 20.05.1997, 17.05.1999, 05.11.1997, respectively passed by the 2nd respondent in F.No.32/95/199/39 40,41,45,46ECA/AM 97 40, 191, 103,102 respectively and quash the same.

WP No.29655 of 2017: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Call for the records pertaining to the impugned attachment order in Na.Ka. No.231/ 2016/ A2 order dt.-. 11.2017 passed by the 5th respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam
[in all W.Ps]

For Respondents
W.P.Nos.39247 to
39252 of 2016 : Mr.S.Makesh
Central Government
Standing Counsel
[For R1 to R3]

W.P.No.29655 of 2017 :Mr.T.V.Krishnamachari
Senior Panel Counsel
[For R1 to R3]

R4 & R5 : No appearance
[in all W.Ps]

COMMON ORDER

The petitioners are questioning the penalty imposed by the respondents under Section 11(2) of the Foreign Trade (Development and Regulation) Act 1992.

2. The grievances of the writ petitioners are that the breakup details regarding the penalty imposed is not detailed



and further, the impugned orders are passed in violation of the provisions of the Act. The original impugned orders are untenable, in view of the fact that the petitioners are not liable to pay any penalty, in view of the subsequent developments occurred after passing of the orders.

3. The learned counsel for the petitioners made several other grounds for the purpose of assailing the impugned original orders.

4. At this point of time, the learned counsel for the respondents intervened and made a submission that the authority, who passed the original orders, unfortunately died and therefore, the respondents could not able to provide all further details to the writ petitioners to sustain the impugned orders as well as the penalty imposed on the writ petitioner. Therefore, the learned counsel for the respondents is of an opinion that an opportunity is to be provided to the respondents, enabling them to provide all the details to the petitioner and thereafter, decide the matter afresh with reference to the contentions in the original order as well as the penalty imposed under the provisions of the Foreign Trade (Development Regulation) Act.

5. The learned counsel for the respondents appearing on W.P.No.29655 of 2017, filed a memo stating that the petitioner himself admitted the amount of Rs.31,75,000/- (Rupees Thirty One Lakh and Seventy Five Thousand only) and therefore, the writ petition in W.P.No.29655 of 2017 is to be dismissed. It is contended that the petitioner admitted the said amount and therefore, there is no reason to consider the grounds raised in this writ petition.

6. This Court is of the considered opinion that there is no proof to establish the demand before this Court and if at all, the said amount is admitted, the petitioner is at liberty to deposit the said amount the respondents. However, in respect of the said writ proceedings also, a fresh order also is to be passed, considering the documents, if any made in this regard. If any request is made for personal hearing, the same is to be provided by the respondents by communicating the date and of time of personal hearing.

7. In view of the fact that the learned counsel for the respondents Mr.S.Mahesh, conceded that the matters are to be remanded back for fresh adjudication, enabling the Department to scrutinize the complete details and pass orders on merits, this Court is inclined to pass the following orders:

(1) The impugned orders dated 20.07.2016,



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05.11.1997, 05.11.1997, 17.05.1999, 17.05.1999, 20.05.1997, 11/2017 passed in proceedings in Na.Ka.No.8105/2015/A2, F.No.32/95/199/46/ECA/AM/97/102, F.No.32/95/199/45/AM 97/103, F.No.32/95/41/AM 97/191, F.No.32/95/199/40/AM 97/191, F.No.32/95/199/39/AM 97/40, Na.Ka.No.231/2016/A2 are quashed and the matters are remanded back to the respondents. The respondents are directed to receive objections / representations, documents, evidences from the writ petitioner and the writ petitioner is directed to furnish the same within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall conduct an enquiry with reference to the materials and documents available on record and take a decision on merits and in accordance with law by following the procedures as contemplated within a period of eight weeks thereafter.

8. With these directions, all the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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Opp AMR Tower, Tirupur 641 604.

+2cc to Mr.T.V.Krishnamachari, Advocate, S.R.No.23886

+1cc to Mr.S.Makesh, Advocate, S.R.No.24234

W.P.Nos.39247 to 39252 of
2016 & 29655 of 2017

JP-I(CO)
SB(15/07/2021)