IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.15703 of 2020
and
WMP Nos.19547 & 19548 of 2020

M/s.Zoom International,
Represented by its Proprietor,
Ms.Velayuthaperumal Natesan Usha ... Petitioner

Vs

1. The Zonal Director General of Foreign Trade,
4th floor, Shastri Bhawan Annexe,
Chennai – 600 006.

2.The Additional Director General of Foreign Trade,
Shastri Bhawan Annexe,
Chennai – 600 006. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to quash the communication sent on 05.10.2020 by the 1st respondent through e-mail placing the petitioner firm under "Denied Entity List".

For petitioner ... Mr.S.Murugappan

For Respondents ... Mr.V.Chandrasekaran
Central Government Senior
Panel Counsel

ORDER

Heard Mr.S.Murugappan, learned counsel for the petitioner and Mr.V.Chandrasekaran, learned Senior Panel Counsel for the respondents.

2. By consent of both the parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. This writ petition has been filed challenging the impugned Communication sent by the 1st respondent on 05.10.2020 under the provisions of the Foreign Trade (Regulation) Act, 1993 and its Rules putting the petitioner firm under the "Denied Entity List" (DEL).

4. The petitioner has challenged the impugned Communication primarily on the ground of violation of principles of natural justice.

5. According to them, despite sending a detailed objection to the show cause notice issued by the respondents, the same has not been considered and without affording a fair hearing, the impugned order has been passed. Further, it is the case of the petitioner that imports were made by them when the notifications issued by the respondents were stayed by orders of this Court in WP No.15921 of 2018 etc., batch. Therefore, according to them, without considering the aforementioned factors and without giving any reasons, the impugned communication has been sent by the 1st respondent by violating the principles of natural justice. In such circumstances, this writ petition has been filed.

6. A counter affidavit has also been filed by the respondents denying the allegations of the petitioner. They would also submit that there is an alternate remedy available to the petitioner under FTP 2.15 of Foreign Trade Policy 2015-20. According to them, instead of exercising that remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, which is not maintainable. It is also their contention that only as an interim measure as per Rule 7 of the Foreign Trade (Regulation) Rules, 1993, the petitioner has been put under the "Denied Entity List" (DEL) and there is no necessity to afford any reasons. It is also submitted that under the Foreign Trade Policy 2015-2020 (FTP 2015-20) dealing with DEL, it does not contemplate any notice. Hence, according to them, the impugned Communication has been issued only in accordance with law.

7. Admittedly, even according to the respondents as seen from the counter affidavit, the impugned Communication has been passed under Rule 7 of the Foreign Trade (Regulation), Rules 1993 . Under the impugned Communication, the petitioner has been put under the "Denied Entity List" (DEL).

8. Rule 7 of the Foreign Trade Regulation Rules, 1993 reads as follows :-

7. Refusal of licence.-

(1) The Director General or the licensing authority may for reasons to be recorded in writing, refuse to grant or renew a[license, certificate scrip or any instrument bestowing financial or fiscal benefits] if--

(a) the applicant has contravened any law relating to customs or foreign exchange;

(b) the application for the [license, certificate scrip or any instrument bestowing financial or fiscal benefits] does not substantially conform to any provision of these rules;

(c) the application or any document used in support thereof contains any false or fraudulent or misleading statement [or where any person makes or abets or attempts to make any export or import in contravention of any provision of the Act or any rules and orders made thereunder or the Policy];

(d) it has been decided by the Central Government to canalise the export or import of [goods or services or technology] and distribution thereof, as the case may be, through special or specialised agencies;

(e) any action against the applicant is for the time being pending under the Act or rules and Orders made thereunder;

[(f) the applicant is or was a partner in a partnership firm (including a limited liability partnership) or is or was a Director or a company or a proprietor ship firm having controlling interest against which any action is for the time being pending under the Act or rules and Orders made thereunder;]

(g) the applicant fails to pay any penalty imposed on him under the Act;

(h) the applicant has tampered with a [license, certificate scrip or any instrument bestowing financial or fiscal benefits];

(i) the applicant or any agent or employee of the applicant with his consent has been a party to any corrupt or fraudulent practice for the purposes of obtaining any other [license, certificate scrip or any instrument bestowing financial or fiscal benefits];

(j) the applicant is not eligible for a [license, certificate scrip or any instrument bestowing financial or fiscal benefits] in accordance with any provision of the Policy;

(k) the applicant fails to produce any document called for by the Director General or the licensing authority;

(l) in the case of a [license, certificate scrip or any instrument bestowing financial or fiscal benefits] for import, no foreign exchange is available for the purpose;

(m) the application has been signed by a person other than a person duly authorised by the applicant under the provisions of the Policy;

[(n) the applicant has attempted to obtain or has obtained or has erroneously claimed Terminal Excise Duty, duty drawback, cash assistance benefits admissible to Importer-exporter Code holder or any other similar benefits from the Central Government or any agency authorised by the Central Government in relation to exports made by him on the basis of any false, fraudulent or misleading statement or any document which is false or fabricated or tampered with.]

(2) The refusal of a [license, certificate scrip or any instrument bestowing financial or fiscal benefits] under sub-rule (1) shall be without prejudice to any other action that may be taken against an applicant by the licensing authority under the Act.

[In case of any erroneous payment of Terminal Excise Duty, duty drawback, cash assistance benefits admissible to Importer-exporter Code holder or any other similar benefits from the Central Government or any agency authorised by the Central Government in relation to exports made by him, the Director General or the licensing authority may, after giving to that person a notice in writing informing him of the details of erroneous payment for which recovery or adjustment of arrears or claims is to be made and after giving a reasonable opportunity of making a representation in writing within such time, as specified therein and, if that person so desires, of being heard, authorise:

9. As seen from the afore mentioned rules, the Director General or the licensing authority will have to give reasons, which has to be recorded in writing, if any order is passed under the said rule. In the case on hand, the petitioner has been put under the "Denied Entity List" (DEL) by the respondents by exercising the power under Rule 7 of Foreign Trade (Regulation) Rules, 1993. However, as seen from the impugned order, no reasons have been given for putting the petitioner under the "Denied Entity List" (DEL). The petitioner has admittedly given a reply to the show cause notice, dated 20.07.2020 issued by the respondents on 05.02.2020. The same has been admitted by the respondents. In the reply to the show cause notice dated 05.02.2020, the petitioner has contended

that they have not violated the provisions of Foreign Trade (Regulations) Rules, 1993 in view of the fact that the imports were made by them, pursuant to interim stay order granted by this Court in respect of the notifications issued by the respondents. As seen from the reply dated 20.07.2020, the petitioner has raised several contentions. However, under the impugned Communication, dated 05.10.2020, none of the objections raised by the petitioner has been considered by the 1st respondent. The impugned communication is a non speaking order.

10. Rule 7 of the Foreign Trade (Regulation) Rules, 1993 makes it clear that reasons will have to be given for putting the petitioner under the "Denied Entity List" (DEL). Since, no reasons have been given, this Court is of the considered view that principles of natural justice has been violated by the respondents. The petitioner ought to have been afforded a fair hearing before such an order could have been passed. Therefore, this Court is of the considered view that the impugned order will have to be quashed and the matter remanded back to the respondents for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner.

11. However, it is made clear that this Court is not expressing any view on the merits of the matter. It is for the petitioner to place all contentions available to them under law before the respondents.

12. In the result, the impugned Communication, dated 05.10.2020 is hereby quashed and the matter is remanded back to the respondents for fresh consideration and the respondents shall pass final orders on merits and in accordance with law after affording a fair hearing to the petitioner including granting them the right of personal hearing, within a period of four weeks from the date of receipt of a copy of this order. No costs.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Zonal Director General of Foreign Trade,
   4^{th} floor, Shastri Bhawan Annexe,
   Chennai - 600 006.

2. The Additional Director General of Foreign Trade,
   Shastri Bhawan Annexe,
   Chennai - 600 006.

+1cc to Mr.S.Murugappan, Advocate Sr.5775

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and
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mp[co]
srg 08/02/2021