IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.17355 OF 2014

M/s.Mohan Breweries and Distilleries Ltd.,
No.7, Selva Street, Madurai Meenakshi Nagar.
Valasaravakkam.
Chennai - 600 087,
Represented by its Executive Chairman,
Mr.M.Nandagopal. ... Petitioner

.Vs.

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

2. The Additional Director General of Foreign Trade,
4th Floor, Shastri Bhawan Annex,
26 Haddows Road,
Chennai - 600 006.

3. The Deputy Commissioner of Customs (Exports),
CFS Navakar (X), Jawahar Customs House,
Nhava Sheva,
Uran (Maharashtra).

4. The Zonal Joint Director General of Foreign Trade,
Shastri Bhawan, Haddows Road,
Nungambakkam,
Chennai - 34. ... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in File No.1/60/162/186/AM12/PRC dated 23.04.2014 quash the same and consequently issue a direction, directing the Respondents to consider the case of the Petitioner for extension of Export obligation period for a further period of 3 months from the date of endorsement of EOP in the advance licenses and allowing third party exports for fulfilling the export obligations in respect of advance licenses namely 1. 0410064468 dated 25.11.2004, 2. 0410069650 dated 15.04.2005 and 3. 0410071130 dated 3.6.2005.

For Petitioner : Mr.Vijaya Narayan
Senior Counsel
For M/s.C.Vigneswaran

For Respondents : Mr.B.Rabu Manohar
SCGPC (For R1, R2 & R4)

Mr.A.P.Srinivas
enior Standing Counsel
(For R3)

O R D E R

The writ on hand is instituted to quash the order of rejection dated 23.04.2014 and to direct the Respondents to consider the case of the Petitioner for extension of export obligation period for a further period of 3 months from the date of endorsement of EOP in the advance licenses and to allow third party experts for fulfilling the export obligations in respect of three advance licenses.

2. The Petitioner is a company engaged in the business of manufacturing IMFL, beer and glass bottle and is also engaged in the power generation as well as trading in apple juice, malt and spirit and several other products. The Petitioner has registered with all the required authorities under the Central and State Government in respect of its Import and Export business. The request of the Petitioner seeking extension of time to fulfill the export obligation was rejected in the impugned proceedings. Thus the Petitioner is constrained to move the present writ Petition.

3. Learned Senior Counsel appearing for the Petitioner contended that in the year 2004, the Government of India issued a notification in Public Interest exempting customs duty, Additional duty, Safe guard duty and Anti-Dumping duty for import of Raw Sugar under the Advance License Scheme (ALS) or Advance Authorisation but with an obligation that white or refined sugar should be exported within 24 months from the date of import. As per the norms, for every 1.05 MT of Raw Sugar imported, the ALS holder has to export 1.00 MT of refined white sugar. Further the content of sucrose by weight in the exported sugar must correspond to polarimeter reading of more than 99.4% but not less than 98.5%. During the year 2004-2006, the Petitioner along with another company, viz., M/s. Sagar Sugar and allied products allied for the Licenses under the ALS and 10

Advances Licenses were granted to the Petitioner and M/s. Sagar Sugar & allied products as Co-Licensees. As per the License, the Petitioner was allowed to import 2.5 Lakh Metric Tons (MT) of Raw Sugar. However, the Actual Import was only to the extent of 2.29 MT and the export obligation of the Petitioner was to export 2.18 MT of white sugar. On 30.06.2006 the Co-Licensee had exported around 54,093 MT of white sugar. In July 2006, the Government of India had imposed a ban on export of Sugar due to the skyrocketing prices of sugar in the local market. On 15.04.2008, the ban on export of Sugar was lifted by the Government of India. On 17.02.2009, the Government of India taking into account the difficulties faced by the ALS holders, issued a notification stating that the exporters can also procure sugar from third party manufacturers to fulfil their export obligation. On the same day, the Government of India suo motu extended the time for completion of export obligation upto 31.12.2009 and finally, the time was extended till 31.03.2011 without payment of composition fees. On 04.06.4009, the Government of India permitted export of White Sugar from "Ton to Ton" basis from their early policy of "Grain to Grain". On 25.10.2010, the Government of India issued clarification on third party exports to the Directorate of Sugar stating that an ALS holder can procure sugar from third parties and export the same with another exporter and the same would fall within the definition of third party exports as denied in Para 9.62 of FTP (Foreign Trade Policy). However, the shipping bill should have an endorsement of the names of all the three parties in the chain. As on 13.03.2011, the Petitioner through third party exporters have exported around 1.61 Lakh MT as against the balance of 1.65 Lakh MT with a balance of a very small quantity of 3781 MT. The above could not be exported for the frequent port congestion, delay in filing shipping bills due to technical snag at customs and due to container lorry strikes at the ports.

On 23.08.2013, a composite fee was imposed at the rate of 6% of the value of the remaining exports and this was sought to be reconsidered by the Petitioner. On 04.09.2013, the Export obligation period was extended for three months upto 30.11.2013. On 25.10.2013, the Petitioner enters into a third party export agreement with M/s.Shri Dutt Polytextiles for completion of its export obligation. On 04.11.2013, the Deputy Commissioner of Customs raised an issue and stalled the export on the ground that clarification has to be obtained from DGFT as to the export done by third party manufacturers as the original ALS was granted only to the Petitioner. On 06.11.2013, the Petitioner submitted a representation to the Deputy Commissioner of Customs stating that as per Para 9.62 of the FTP, third party export of sugar against the export obligation of advance license is allowed and therefore, to allow them to export the sugar. Due to administrative delay and red tapism between the customs department and the DGFT, the third party exporter M/s. Shri Dutt

Polytextiles cancelled the agreement with the Petitioner. On 14.11.2013, the office of the DGFT issues a clarification stating that third party exports are allowed subject to the condition that the third party will not claim any benefits under the scheme. On 23.12.2013, taking into consideration the delay and the hurdles faced by the Petitioner, the Respondents once again extended the export obligation period by 1 month i.e. upto 31.01.2014. On 16.01.2014, the Petitioner once again requested the Additional Commissioner of Customs to grant permission to export without any delay as the period expires on 31.01.2014. Since there was a further delay M/s. Sucden India Private Limited also cancelled the agreement with the Petitioner. On 20.01.2014, the Petitioner made one more representation stating that due to the administrative delays, the Petitioner was not able to fulfil his obligations and sought three months' time to complete the export obligation. On the said representation, the Respondents issued the impugned order rejecting the request of the Petitioner for further extension.

4. Learned Senior Counsel further contended that all along the Petitioner was taking sincere steps to fulfill the export obligations and admittedly, on several times, the Respondents extended the time. In spite of extension granted by the Government of India, there were some administrative delay and red tapism between the department on cancellation of third party agreement between the third party exporter and the Petitioner. The genuine reasons for the delay and the hurdles faced by the Petitioner company were not considered by the Respondents for grant of extension of further period of 3 months.

5. Learned Counsel appearing for the First, Second and Fourth Respondents contended that several opportunities were granted to the Petitioner to fulfil the export obligation but without fulfilling the export obligation, again the Petitioner sought for further extension. Thus the Respondents rejected the representation submitted by the Petitioner for extension of time and therefore, there is no infirmity and perversity in the impugned order.

6. Since the Petitioner consistently failed to complete its export obligation and the Petitioner having failed to get their case regularised in terms of Public Notice 22 (RE-2013)/2009-2014, dated 12.08.2013, the case of the Petitioner was rejected. Thus, the Petitioner company failed to avail several opportunities provided by the Respondent to complete its export obligation or regularize its advance authorisations. Therefore, the Writ Petition is devoid of merits and has to be rejected.

7. This Court is of the opinion that a close reading of the facts and circumstances would reveal that the Petitioner has

taken effort on several occasions but failed due to some unavoidable delay. Delay occurred either on account of Administrative reasons or due to cancellation of agreement of the Petitioner with the third party company.

8. However, the facts remain that the Petitioner taken efforts to fulfil its exports obligations as required under the Foreign Trade Policy. The relief sought for in the present Writ Petition is to grant extension for a period of three months. The Writ petition was filed on 30th June 2014, almost 6 ½ years lapsed.

9. Under these circumstances, the practical position as of now is to be considered by the authorities and the relief as such cannot be granted by this Court on account of efflux of time. However, the petitioner could be able to establish that the non-fulfillment of export obligation was due to various reasons and such reasons are to be considered only by the authorities competent as the Writ Petition having been filed in the year 2014 and 6 ½ years lapsed. Thus, this Court is of the considered opinion that the impugned order passed by the First Respondent in proceedings in File No. 01/06/162/186/AM12/PRC dated 23.04.2014 is quashed and the matter is remanded back to the First Respondent for reconsideration and passing fresh orders. The Petitioner is directed to submit a fresh representation and all other relevant documents to the First Respondent along with a copy of the order passed in this Writ Petition within a period of four weeks from the date of receipt of a copy of this order and on receipt of any such representation, the First Respondent is directed to consider the same on merits and in accordance with law and pass orders afresh as expediciously as possible.

10. Learned counsel for the Respondent made a submission that the advance license No. 0410064468 dated 25.11.2004 has been erroneously stated by the Petitioner even in the prayer sought for in the Writ Petition. However, these factual aspects have to be considered by the authorities competent while reconsidering the issues.

11. Accordingly, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Maya

To

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

2. The Additional Director General of Foreign Trade,
   4th Floor, Shastri Bhawan Annex,
   26 Haddows Road,
   Chennai – 600 006.

3. The Deputy Commissioner of Customs (Exports),
   CFS Navakar (X), Jawahar Customs House,
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   Uran (Maharashtra).

4. The Zonal Joint Director General of Foreign Trade,
   Shastri Bhawan, Haddows Road,
   Nungambakkam,
   Chennai – 34.

+1cc to M/s.C.Vigneswaran, Advocate, S.R.No.44311
+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.44023

W.P.NO.17355 OF 2014

SS(CO)
PBS/22/09/2021