IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.29682 of 2019
and
WMP.Nos.29575, 29579 & 29583 of 2019

M/s.Devinarayanan Exports (P) Ltd.,
Rep. by its Director N.Sudhakar,
No.24-B, 2nd Street,
Dhandayudapani Nagar, Kotturpuram,
Chennai - 600 085. ... Petitioner

Vs

1. EPCG Committee,
   Rep. by its Chairman,
   The Additional Director General of Foreign Trade,
   H Wing, Udyog Bhawan, New Delhi 110 011.

2. The Additional Director General of Foreign Trade,
   Office of Additional Director of Foreign Trade,
   4th Floor, Shastri Bhawan Annexe,
   No.26, Haddows Road, Chennai-600 006.

3. The FTDO /Asst. DGFT (E- Commerce)
   Office of the Additional Director General of Foreign Trade,
   4th Floor, Shastri Bhawan Annexe,
   No.26, Haddows Road, Chennai-600 006.

4. Assistant Commissioner of Customs (FPCG - EODC)
   Chennai -IV, Commissioner,
   Rajaji Salai, Custom House,
   Chennai-600 001. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the communication in Minutes of the Meeting dated 26.07.2019 in Sl.No.3 in Ref. No.01/60/162/146/ AM20/PRC issued by the 1st respondent and quashing the same as far as the petitioner is concerned and directing the 2nd respondent to issue the Export Obligation Discharge Certificate.

For Petitioner : Mrs.V.Pramila

For Respondents: Mr.V.Chandrasekar
Central Government Standing Counsel -R1 to R3
Mrs.Hema Muralikrishnan
Senior Standing Counsel-R4

ORDER

The petitioner is a manufacturer-exporter claiming to be engaged in the production and export of rough granite blocks. The petitioner had applied for and had been granted eight licenses under the Export Promotion Capital Goods Scheme (EPCG Scheme) under the Foreign Trade Policy issued by the Ministry of Commerce, Government of India for import of capital equipments either at nil or concessional rate of customs duty.

2. The benefit granted was in terms of the EPCG Scheme issued under Chapter 5 of the Foreign Trade Policy for the period 2004 to 2009, and is available to an exporter, who satisfies export obligations under Clause 5.4 thereof. Clause 5.14 of the handbook, provides for the consequence of the prescribed export obligations not being achieved and states that the exporter shall then be liable to remit customs duty along with interest, as prescribed. It is the petitioners case that the export obligations have been fulfilled in full.

3. Be that as it may, certain deficiencies appear to have been noticed by the Director General of Foreign Trade/R2 and the FTDO/Assistant DGFT (E- Commerce) /R3 and deficiencies letters were issued to the petitioner calling for rectification of defects under threat of withdrawal of the benefit under the EPCG Scheme. Once such sample, placed at page no.97 of the compilation of document dated 05.12.2016 states as follows:

Sir/Madam,

Your Application is deficient due to following reasons:

Free S/Bills cannot be considered towards specific E.O. fulfilment. Hence you are requested to regularize the case in terms of para 5.14 of H.B.P. 2004-09.

You are requested to remove above deficiencies within a period of 15 days from the date of issue of this letter, otherwise your case will be treated as closed.

4. Such deficiency letters have been issued in respect of all shipping bills for which the EPCG benefit was sought under

the eight licenses granted to the petitioner. The deficiency notices were followed by show cause notices dated 26.03.2019 proposing the withdrawal of the EPCG benefit and also calling upon the petitioner to appear for a personal hearing to explain its case as to how it was entitled to the benefit claimed. In two of the notices dated 26.03.2019, placed at pages 171 and 173 of the compilation, the authority calls upon the petitioner to produce various export documents to establish the discharge of export obligation under the scheme, within a stipulated time.

5. Though the petitioner/exporter had, admittedly, submitted some documents, the same were found to be defective and hence defect memos had come to be issued to the exporter, that, according to the respondent, have not been complied with. According to R2, there was a violation of the terms of the Scheme disentitling the petitioner to the benefit claimed. In conclusion, the authority proposes that on account of the failure to submit the required documents, the benefit granted under the Scheme be reversed. The bank guarantee furnished by the petitioner on 14.02.2011 thus came to be invoked by the Assistant Commissioner of Customs/R4 on 27.09.2019. The petitioner also approached the Policy Relaxation Committee (PRC) seeking a relaxation of the FTP and the PRC, by Policy Circular No.7/2002 confirmed the proposal of the DGFT, vide its order dated 11.07.2002, merely rejecting the request of the petitioner for policy relaxation, on the ground that as the EPCG License number was not mentioned in the free shipping bill, the claim of the petitioner is to be rejected.

6. The petitioner filed written submissions in response to the show cause notices received. However, in view of the pendency of the present writ proceedings, I am given to understand that no further proceedings have been taken in regard to the show cause notices.

7. The petitioner relies upon para 2.58 of the Foreign Trade Policy that, according to it, provides for some relaxation from the rigour of the policy in the following terms:

> 2.58 Exemption from Policy/ Procedures
>
> DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any procedure. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the Committees as under:

Sl.No.	Description	Committee
(a)	Fixation/modification of product norms	Norms Committees
(b)	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committees
(c)	All other issues	Policy Relation Committee (PRC)

8. According to the learned counsel for the petitioner, the non-mention of the EPCG licenses number in the free shipping bills under which the exports were undertaken, constitutes a mere procedural lapse and should not have any bearing upon its claim to the benefits under the EPCG Scheme.

9. Per contra, it is the case of the DGFT that the non-mention of the numbers is not merely a technical lapse, but would tantamount to substantial non-fulfilment of the policy conditions. Unless there had been a proper verification of the documents and all other material that were required to be produced by the petitioner/exporter to substantiate its entitlement to the scheme including specifically the licence numbers, the benefits of the scheme cannot be granted to an exporter for the mere asking.

10. Reference is made by learned counsel for the petitioner to Circular No.7 of 2002 dated 11.07.2002, which, according to it, supports its argument that non-mention of EPCG License number and date on the shipping bill relating to exports was only a technical lapse and would not impact its fulfilment of export obligation.

11. Both learned counsel i.e., for the petitioner as well as for the DGFT also refer, in this connection, to Circular No.36 of 2010 dated 23.09.2010, issued by the Central Board of Customs dealing with the subject matter of 'Conversion of free shipping bills to export promotion scheme shipping bills and conversion of shipping bills from one scheme to another'. Both parties also agree that the authority to decide on whether an exporter is entitled to the benefit of the EPCG Scheme or not, is the Director General of Foreign Trade, the license issuing authority. In fact, in the counter filed by R4, he states that the invocation of bank guarantee by the Customs was only in the absence of an Export Obligation Discharge Certificate (EODC) issued by the DGFT and if the license issuing authority issues a no-objection certificate then there would be no further demand or move taken by the Customs Authority to precipitate the matter.

12. The respondents are thus in concert that it is the DGFT which is to take a decision in regard to whether the petitioner is entitled to its claim under EPCG Scheme. A determination in this regard has unfortunately, not been done thus far.

13. I agree with the respondent that the petitioner is not liable to be granted the benefit under the Scheme for the mere asking. Evidently, the claim of the petitioner that it has complied with the dictates of the scheme must be supported with far more evidences that the mere mention of the license number upon the shipping bill. The entitlement to the EPCG scheme is a matter of verification of the documents as well as all evidences that the petitioner may produce to establish the factum of export and the concerned authority must convince himself of the position that the exports undertaken by the petitioner were of the nature and specifications that would qualify for the benefit under the scheme.

14. In the present case, since the exports were under free shipping bills, it appears that authorities have not had no opportunity or avenue to undertake any examination in the matter. However, and fortunately for the petitioner, the matter is still at large, since the show cause notices issued by R2 in respect of the exports undertaken under two licenses, are still pending.

15. The dispute in this matter can thus be resolved by directing the ADGFT to continue the proceedings under show cause notices dated 26.03.2019, hear the petitioner and pass orders on the entitlement to the benefits under the EPCG Scheme. The exercise shall be completed within two weeks from today and shall cover the entitlements of the petitioner in respect of all eight licenses. Let suitable orders be passed in this regard after the petitioner is heard. Till such time the impugned order dated 26.07.2019 passed by the PRC be kept in abeyance and subject to the result of the enquiry to be undertaken as ordered aforesaid.

16. This writ petition is disposed as above. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ska

To

1. The Chairman,
   EPCG Committee,
   The Additional Director General of Foreign Trade,
   H Wing, Udyog Bhawan, New Delhi 110 011.

2. The Additional Director General of Foreign Trade,
   Office of Additional Director of Foreign Trade,
   4th Floor, Shastri Bhawan Annexe,
   No.26, Haddows Road, Chennai-600 006.

3. The FTDO /Asst. DGFT (E- Commerce)
   Office of the Additional Director General of Foreign Trade,
   4th Floor, Shastri Bhawan Annexe,
   No.26, Haddows Road, Chennai-600 006.

4. Assistant Commissioner of Customs (FPCG - EODC)
   Chennai -IV, Commissioner,
   Rajaji Salai, Custom House,
   Chennai-600 001.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.38101

W.P.No.29682 of 2019 and
WMP.Nos.29575, 29579 & 29583 of 2019

NRL(CO)
CS/20/10/2021