IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.383 of 2017
and
W.M.P.No.414 of 2017

M/s.S.S.D.Oil Mills Company Limited,
Represented by its Director,
Shri.R.Deepan Dorai,
No.52, 48th Street, Ashok Nagar,
Chennai - 600 083 ... Petitioner

Vs.

1. The Assistant Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
Chennai - 600 006.

2. The Joint Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
Chennai - 600 006.

3. The Additional Director General of Foreign Trade,
26, Haddows Road, Shastri Bhavan Annexe,
Chennai - 600 006.

4. The Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No.02,
Maulana Azad Road, New Delhi - 110 011.

5. The Export Promotion Capital Goods (EPCG) Committee,
Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No.02,
Maulana Azad Road, New Delhi - 110 011.

6. The Deputy Commissioner of Customs (EPCG),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order of cancellation of the petitioner's Import Export Code IEC No.0492020779 of the petitioner company by the 3rd respondent and quash the same and further direct the 3rd respondent to permit the petitioner company to use his Import Export Code No.0492020779 for the purpose of import and export of the goods belonging to the petitioner company.

For Petitioner : Mr.G.Derrick Sam
For Respondents: Mr.V.Ashok Kumar
CGSC

O R D E R

The petitioner had imported capital goods under 3 EPCG Licence from manufacture and export of Vanaspati and Margarine. However, the petitioner was unable to get export discharge the export obligations under the 3 EPCG Licence and therefore a show cause notice was issued by the Assistant Director General of Foreign Trade during November 2013 proposing to show cause as to why:-

> a.You should not be declared defaulter and placed in the Denied Entity List (DEL) so that benefit under Foreign Trade Policy are stopped including pending/future refusal of licence under Section 7.1(k) of the Foreign Trade (Regulation) Rule, 1993.
>
> b.Penalty should not be imposed under Section 11(2) of the FTDR Act, 1992.
>
> C.Your IEC should not be suspended under Section 11(7) of FTDR Act, 1992 as amended during 2010.

2.The aforesaid show cause notice culminated in the order dated 16.01.2014 of the 1st respondent. In the said order, the first respondent held that the petitioner was guilty of violating the conditions of the Licence in question and was liable to pay penalty under Section 11(2) of Chapter IV of Foreign Trade (Development & Regulation) Act, 1992. By the said, the 1st respondent held as under:-

> In the circumstances, the undersigned is now fully convinced that the Licensee firm/company and its Directors are guilty of violating the conditions of the Licence in question thereby liable to penalty under Section 11(2) of Chapter IV of Foreign Trade (Development & Regulation) Act, 1992. In exercise of powers vested in me vide Notification dated 17th April 2009 issued by DGFT, New Delhi in F.No.18/27/HQ/06-07/ECA III, I hereby impose a penalty of Rs.3942308/- (Rupees Thirty nine lakhs forty two thousand three hundred and eight only) being 2 time

> Duty saved value on the firm and on the Partners as no reply to the SCN and also no appearance of Personal Hearing granted to him.
>
> I further order that no further license shall be issued to the firm/company or to any other firm/Company in which the Proprietor/Partners/Directors of this firm/Company in which the Proprietor/Partner/Directors is/are directly or indirectly involved in the day - to - day activities of that firm as per Provisions of Handbook read with Rule 7(1) of the Foreign Trade (Regulation)Rules, 1993.
>
> This order is issued without prejudice to any other action that may be taken under any other Act, Rules or Regulations in force.

3.Meanwhile, the petitioner approached the respondents for considering the export of Cotton Seed Hulls and Cotton Linters to be considered for discharge of export obligations. These proceedings culminated in several orders in respect of which the petitioner had filed Writ Petitions in W.P.Nos.384 to 386 of 2017 which came to be diposed by a seperate order dated 06.01.2017. Thereafter, an order dated 16.02.2017 was passed by the EPCG Committee, rejecting the request of the petitioner. Again the petitioner once again filed a Writ Petition in W.P.Nos.21208 & 21209 of 2017 which was again culminated the another order dated 03.04.2019 of the EPCG Committee which was again challenged in W.P.No.15470 of 2019. The Foreign Trade Development Officer thereafter passed an order dated 03.10.2019 which the petitioner submits is now subject matter of Writ Petition in W.P.No.32874 of 2019.

4.It is the case of the petitioner, though the show cause notice issued during November 2013 proposed why IEC code of the petitioner should not be suspended under Section 11(7) of Foreign Trade (Development & Regulation) Act, 1992 as amended during 2010, the IEC code was not suspended by the respondents. However, before filing the writ petition the petitioner came to know that respondent has suspended the Licence.

5.It is submitted that suspension and cancellation of the Licence is governed by Section 8 of the Foreign Trade (Development & Regulation) Act, 1992. He submits that before suspending or cancelling the Licence, the respondent/Director General or any other Officer authorised by him may call for the records or any other information from that person and may, after giving to that person a notice is writing informing him of the grounds on which it is proposed to suspend or cancel the

Importer-Exporter Code Number and after giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice and, if that person so desires, of being heard, suspended for a period, as may be specified in the order, or cancel the Importer-Exporter Code Number granted to that person.

6.The learned counsel for the petitioner submits that the power to cancel the IE Code is under Section 8 of the FTDR Act, 1992, which contemplates a notice and hearing in support of the order of original authority will be passed. On the other hand, pending disposal of the writ petition challenging the order imposing penalty on the petitioner, the respondents suo motu cancel the registration as it is evident from the website of the respondents indicating that the petitioner's IE Code has been cancelled.

7.Under these circumstances, the petitioner has filed the present writ petition and submits that even if the petitioner has not paid the penalty that was originally passed by an order dated 16.01.2014 and subsequently in the remand proceedings. The cancellation of IE Code has to be in accordance with law in terms of Section 8 of the FTDR Act, 1992.

8.Mr.V.Ashok Kumr, learned Central Government Standing Counsel for the respondent submits that the IEC Code of the petitioner was suspended on 17.03.2014. However, there no copy of the order suspending the Licence of the petitioner has been filed by the respondent. The petitioner has been awaiting for almost 5 years now, since the writ petition is filed. As on date, there is no dispute, that the petitioner has not discharged the export obligations undertaken in the 3 EPCG licence and request of the petitioner for considering the exports of Cotton Seed Hulls & Cotton Seed Linters.

9.However, the fact remains that a show cause notice 2013 was issued to the petitioner in November by the Assistant Director General of Foreign Trade. In the show cause notice, there was also a proposal as to why the Import and Export Code of the petitioner should not be suspended under Section 11(7) of FTDR Act, 1992 as amended during 2010.

10.The said show cause notice also culminated in an order dated 16.01.2014 of the first respondent. It did not however suspended the license of the petitioner. It was passed however without prejudice to any other action that may be taken under the Act, Rules or Regulations in force.

11.Since no further show proceedings were initiated against the petitioner for cancellation of the there Import and Export code of the petitioner. The jurisdictional officer under the Foreign Trade (Development and Regulation) Act, 1992 is directed to issue appropriate show cause notice to the petitioner under the provisions of the aforesaid Act to show casue as to why Import and Export Code of the petitioner should not be cancelled? Such show cause notice may be issued within a period of 30 days of receipt of this order.

12.On such show cause notice being issued within such time, the petitioner shall file a reply within a period of 30 days thereafter. The jurisdictional officer shall thereafter pass appropriate order in accordance with law within a period of 90 days after giving adequate opportunity to the petitioner being heard.

13.The status quo as on date shall continue for a period of 90 days and will be subject to further outcome of the proposed order to be passed by the jurisdictional officer under the provisions of the aforesaid Act.

14.This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To
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26, Haddows Road, Shastri Bhavan Annexe, Chennai - 600 006.

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Custom House, No.60, Rajaji Salai, Chennai - 600 001.

+1 CC to Mr. Hari Radhakrishnan, Advocate sr 19455
+1 CC to Mrs. Hema Muralikrishnan, Advocate sr 19463.

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and
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KV(CO)
SP(19/05/2021)