BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.04.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) No.3420 of 2021
and
W.M.P(MD)Nos.2772 & 2773 of 2021

M/s.Jacquard Fabrics (India),
Private Limited,
Rep by its Director
Mr.J.Vijayakumar,
SF.No.16/3A1, No.10, Muthur Village,
Kinathukadavu, Pollachi Taluk,
Coimbatore - 642 109,
Tamilnadu ...Petitioner

Vs.

1.The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2.The Assistant Commissioner of Customs (EPCG),
Custom House, New Harbour Estate,
Tuticorin - 628 004.

3.The Assistant Commissioner of Customs,
(Arrears Recovery Cell),
Custom House, New Harbour Estate,
Tuticorin - 628 004. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in original No.37/2019 in C.No.VIII/16/09/2018, EPCG File No.42/79-EPCG, dated 24.01.2019, passed by the second respondent and to quash the same and further direct the second respondent herein to rehear and dispose off the same on merits after affording an opportunity of personal hearing and considering the EODC/Redemption letter already furnished by the petitioner herein.

For Petitioner :Mr.A.K.Jayaraj
For Respondents :Mr.Aravindhan
Standing Counsel

O R D E R

This Writ Petition has been filed by the petitioner to quash the impugned order of the second respondent in original No.37/2019 in C.No.VIII/16/09/2018, EPCG File No.42/79-EPCG, dated 24.01.2019 and to direct the second respondent herein to rehear and dispose off the same on merits after affording an opportunity of personal hearing and considering the EODC/Redemption letter.

2.The brief facts of the case are as follows:

The petitioner company namely, M/s.Jacquard Fabrics (India) Private Limited is engaging in export of cotton knitted fabrics and a holder of IE Code No.3207006884 and issued with an EPCG Authorisation No.3230012353, dated 06.08.2008, for the import of Textile Machinery, under the EPCG Exemption Notification No.64/2008, dated 09.05.2008. According to the petitioner, he had applied for extension of Export Obligation period and it was extended upto 05.08.2018. The Export obligation was also fulfilled on 29.12.2017 itself by the petitioner within the extended validity period. Further, the petitioner applied to JDGFT, Coimbatore for Export Obligation Discharge Certificate and the same was issued by JDGFT vide letter dated 26.11.2019, as such, the petitioner had complied with all the conditions of the Exemption Notification. Subsequently, during February 2020, Tuticorin Customs have issued an alert in the EDI system against the petitioner's IEC No.3207006884 for non-fulfilment of Export Obligation and on verification the petitioner came to know that an exparte order in original No.37/2019, dated 24.01.2019 had been passed by the second respondent in File C.No.VIII/16/09/2018/EPCG File No.42/79-EPCG, dated 24.01.2019, confirming the demand for non-fulfilment of Export obligation, based on which, the Department had enforced the Bank Guarantee executed by the petitioner and realised an amount of Rs.3,21,000/-. According to the petitioner, the impugned order, related show cause notice/ personal hearing intimations were not received by the petitioner due to relocation of their unit.

2.1.On 19.02.2020, the petitioner had sent a letter dated 19.02.2020 to the respondents enclosing the proof of fulfilment of Export Obligation and the extension of the Export Obligation period. Without considering the same, the respondent issued show cause notice, demanding duty under the pretext that the petitioner failed to produce evidence of EODC. Further, the second respondent vide order dated 24.01.2019 had confirmed the demand for non-fulfillment of export obligation. Hence, the petitioner produced the relevant documents to the second respondent on 28.12.2019, with regard to the fulfillment of export obligation and requested to refund the Bank Guarantee amount. Even then, the respondent has issued the impugned order. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would

submit that without ascertaining the proper service of show cause notice, which was mechanically sent to the petitioner's old address, the impugned order came to be passed. He would further submit that reasonable opportunity should be given to the petitioner to explain his case and therefore, the impugned order is to be set aside.

4. Per contra, the learned Standing Counsel would submit the second respondent passed the impugned order in accordance with law and hence, there is no need to interfere with the impugned order.

5. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials placed before the Court.

6. On a perusal of the records, it is clear that the petitioner had fulfilled the Export obligation as on 29.12.2017 and the petitioner's Export Obligation period was also extended upto 05.08.2018. It is also seen that the petitioner applied to JDGFT, Coimbatore for Export Obligation Discharge Certificate and the same was issued by JDGFT vide letter dated 26.11.2019. It is seen that the respondent had sent the show cause notice, intimation for personal hearing to the petitioner's old address and even without ensuring that whether the petitioner received such communications, the second respondent without application of mind had proceeded as if the petitioner has not fulfilled the export obligations and as a result of which, the impugned order came to be passed. Therefore, considering the facts and circumstances of the case, this Court is of the considered view that the impugned order is liable to be set aside and the matter needs consideration afresh.

7. In the result, this writ petition is allowed and the impugned order in original No.37/2019 in C.No.VIII/16/09/2018, EPCG File No.42/79-EPCG, dated 24.01.2019 is set aside and the second respondent is directed to pass orders afresh, after affording an opportunity of personal hearing to the petitioner. The petitioner shall produce all the relevant documents including Export Obligation Discharge Certificate/Redemption letter to the second respondent. Such exercise shall be completed by the second respondent, within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:
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+1 CC to M/s.A.K.JAYARAJ, Advocate (SR-15738[F] dated 09/04/2021)

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