



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

WP(MD) Nos.17050, 17079 & 17081 of 2019

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Raj Carbons,
Represented by its Managing Partner,
S.Gnanaraj

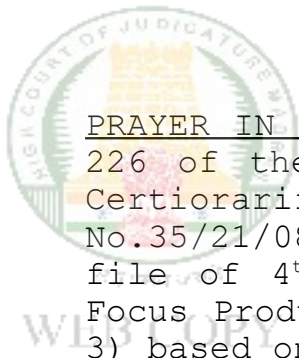
... Petitioner in all WPs

Vs.

- 1.Union of India,
Represented by the Secretary,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Policy Section - 3, Room No.508,Udyog Bhawan,
New Delhi - 110 011.
 - 2.The Joint Director General of Foreign Trade,
Office of Joint Director General of Foreign Trade,
117, 1st Main Road,
K.K.Nagar, Madurai.
 3. The Deputy Director General of Foreign Trade,
Office of Deputy Director General of Foreign Trade,
117, 1st Main Road,K.K.Nagar, Madurai.
 4. The Assistant Director General of Foreign Trade,
Office of Assistant Director General of Foreign Trade,
117, 1st Main Road,K.K.Nagar,
Madurai.
- ... Respondents in all Wps

PRAYER IN WP(MD)No.17050 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records in file No.35/21/087/81527/AM16, (dated 10.02.2016), dated 19.02.2016, on the file of 4th respondent and to direct the respondent to grant the Focus Product Scheme (FPS) benefit for the year 2012-2013 (Chapter-3) based on the circular, dated 14.07.2015.

PRAYER IN WP(MD)No.17079 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records in file No.35/21/087/81524/AM16 (dated 08.02.2016) dated 19.02.2016, on the file of 4th respondent and to direct the respondent to grant the Focus Product Scheme (FPS) benefit for the year 2011-2012 (Chapter-3) based on the circular, dated 14.07.2015.



PRAYER IN WP(MD)No.17081 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records in file No.35/21/087/81525/AM16 (dated 08.02.2016) dated 19.02.2016, on the file of 4th respondent and to direct the respondent to grant the Focus Product Scheme (FPS) benefit for the year 2012-2013 (Chapter-3) based on the circular, dated 14.07.2015.

In all writ petitions:

For Petitioner : Mr.S.Ramesh

For Respondents : Mrs.L.Victoria Gowri

Assistant Solicitor General of India

COMMON ORDER

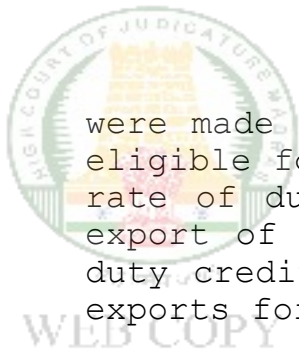
Since the issue raised in all these writ petitions are one and the same, with the consent of the learned counsel appearing for the parties, these three writ petitions are heard together and disposed of by this common order.

2.The petitioner in all the three writ petitions is one and the same. The petitioner is a partnership firm, which was duly registered under the Partnership Act, which was established in the year 2002, it is claimed that the petitioner is one of the leading manufacturers of steam activated carbon in South India with the manufacturing capacity of 8300 metric tons per annum.

3.The petitioner firm was registered with Coconut Development Board. Though they issued licence on 14.10.2009, it was renewed on 01.04.2014, and it was valid up to 31.03.2019, and again, it has been renewed up to 2024, and the petitioner's firm obtained the license for export and mainly exporting Coconut Shell Activated Carbon.

4.The activated Carbon process method is carried out in two stages. In the first stage, the coconut shell is converted into shell charcoal by carbonization process, and the coconut shell charcoal is activated by reaction with steam. Accordingly, after the manufacturing process, the manufactured goods are to be exported and for doing the export operations, the petitioner claimed to have paid regular duties and charges, payable to the concerned Department, as and when required, which includes the Foreign Trade Department.

5.The petitioner also got registered with Importer and Exporter Certificate. The EXIM policy has introduced several measures to improve export turnover from the country. For diversifying the export market or the type of commodities that are exported, Focus Product Scheme are being listed (FPS). The aim of the "Focus Product Scheme" is to promote the products in the international market. This scheme was launched in the year 2006, thereafter, several amendments



were made in the said scheme, under which, more products are become eligible for export incentives under the scheme and giving different rate of duty credit scrip concessions. As per the FPS policy, the export of notified products to all countries shall be entitled for duty credit scrip equivalent to 2 to 5 percent of the value of the exports for each licensing year.

6. In this context, in order to get the export scrip under the FPS policy, since applications have to be made to the respondents, within a time frame, by using the shipping bills, such applications seems to have been made by the petitioner. In this regard, it is to be noted that, in the first case, such application with bills were made on 10.02.2016, in the second case, on 08.02.2016 and in the third case on 11.02.2016.

7. However, the said applications have been rejected by the respondents through the impugned orders stating that, it is barred by limitation or beyond the limitation period. Therefore, challenging the said orders of rejection passed by the respondents, refusing to issue the EXIM script under the FPS scheme to the petitioner, these writ petitions have been filed.

8. Heard Mr.S.Ramesh, learned counsel appearing for the petitioner, who pointed out that the petitioner, admittedly, in the three cases, had submitted the bills with application for getting the scrip on the dates noted against each of the case, however, those applications have been rejected, as if that, those applications were made beyond the time limit.

9. In this context, the learned counsel for the petitioner has pointed out that, in the counter affidavit, they have stated that, the time limit was extended pursuant to the clarification/notification issued in this regard, and despite the time, having been extended, and within the extended period, the petitioner, eventhough, had filed these applications with shipping bills, the same has been rejected by a self-imposed restriction on the part of the respondents that, such extension was limited only up to six months from the date of clarification, and beyond the six months period, no such applications were entertained from any such exporter, therefore, accordingly, they have rejected.

10. In this context, the learned counsel for the petitioner would submit that, absolutely, there is no rational behind such a decision taken by the respondents to extend the period only for six months, for which, no plausible reason has been given and by fixing an artificial period of six months, which, according to the respondents, ended on 14.01.2016. These applications since were made in the first and second week of February, 2016, that is, only within few days, after the six months period, those applications ought not to have been rejected, as there is no legal obligation on the part



of the respondents to fix such a rigid period of six months, and reject those applications made beyond six months period, and hence, these rejection orders, which are impugned herein made against the petitioner, are liable to be interfered with, he contended.

11. I have heard Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India, appearing for the respondents, who, on instructions, and by relying upon the counter affidavit filed in each of these writ petitions, has stated that, insofar as the policy of the respondents, to give concession scrip under FPS scheme is concerned, there has been a limitation prescribed in this regard, and this is governed by the Hand Book of Procedures issued in this regard.

12. In this context, the learned Assistant Solicitor General of India relied upon the following averments in the counter affidavit filed on behalf of the respondents:

"One clarification letter No.01/61/180/34/AM15/PC3/200 dated 14.07.2015 was issued by first Respondent towards the effect that the description of export product, even if it differed, can be considered for the incentive scrip under Focus Product Scheme. After the above clarification letter, the petitioner had filed their previous application No.35/21/87/80954/AM16 on 25.08.2015. Since the clarification letter is not a Public Notice as mentioned as per para 3.11.19(a) of Hand Book of Procedure, 2009-14 i.e.

"Further, for shipments already made prior to the inclusion/modification of the items/markets in relevant appendices by various Public Notices issued from time to time; the last date for filing applications shall be six months from the end of the month of the relevant Public Notice that included/modified the items/markets....", this Respondent had initially rejected the application as time barred since all the Shipping bills filed in the application No.35/21/87/80954/AM16 were expired for more than three years. But in the Open House Meeting of MEPZ at Madurai on 5.1.2016, this second respondent was one of member and it was decided in the Meeting that all the applications, which were filed within six months of the clarification letter (even though it is not a Public Notice as mentioned in para 3.11.19(a) of H.B of procedures) issued by the first Respondent, may be considered for incentive scrip under Focus Product Scheme. Hence, this Respondent had issued the incentive scrips on 6.1.2016 not only to the petitioner earlier application No.35/21/87/80954/AM16



dated 25.08.2015 on 6.1.2016 for a value of Rs.8,58,790/- but also to all the applications filed within the time limit (within six months from the date of clarification letter).

Again the petitioner had filed this application in question i.e.35/21/87/81525/AM16 on 8.2.2016 for the value of Rs.9,96,098 containing 25 Shipping Bills and all the Shipping bills were expired more than four years. Moreover, this application was not filed within six months from the clarification letter. Hence, this Respondent had rejected this application on 19.2.2016. Consequent on the further representation made by the petitioner in this matter, this Respondent referred the matter to their higher authorities for getting further clarification and issued final rejection on 25.10.2017 in this matter."

13.Relying upon these averments made in the counter affidavit, learned Assistant Solicitor General of India would contend that, there has been a decision taken in the joint meeting held on 05.01.2016, that is, called Open House meeting of MEPZ at Madurai, wherein, the second respondent was one of the member and in that meeting, it was decided to extend the period of limitation for six months, which is strictly in tune with para 3.11.19(a) of Hand Book of Procedures, and the said six months period expired on 14.01.2016, and whatever applications made with shipping bills on or before 14.01.2016, were considered and allowed, and some of such applications and bills submitted by the petitioner itself, were considered and granted, whereas, the applications and bills submitted beyond the six months period, that is, after 14.01.2016 were rejected. The learned Assistant Solicitor General of India would further contend that, it is not only the case of the petitioner that, his applications filed beyond the limitation period were rejected, but all such applications filed beyond the limitation period were rejected, therefore, it cannot be stated that there is no rational behind the decision taken on 05.01.2016, that the period of limitation has been since extended for six months from the date of clarification letter, cannot be countenanced, because, there is absolutely a rational behind it, as the six months period extension was given strictly in tune with the procedure established under para 3.11.19(a) of Hand Book of Procedures, as referred to above.

14.That apart, the learned Assistant Solicitor General of India would also urge the point that, as against the rejection orders, which are impugned herein, the petitioner could have filed an appeal to the higher forum, that is, Policy Relaxation Committee, and no such appeal has been filed, without exhausting such appeal remedy, the petitioner ought not to have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, therefore, on that ground also, the learned Assistant



Solicitor General of India seeks dismissal of these writ petitions.

15. I have heard the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. Insofar as this EXIM concession scrip is concerned, it is a concession, ofcourse, given to enhance or boost the export, and such kind of concession scrip can be given, based on the Policy of the Government. In this regard, the scrips are being issued under a scheme called Focus Product Scheme, that is, FPS, under the said scheme, how such concession can be obtained by the exporter has been clearly stated in the Hand Book of Procedures, which have been heavily relied upon by the respondents' side.

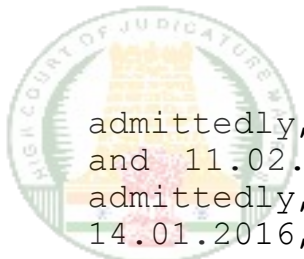
17. There is a time limit for making such an application to get the concession scrip, and such kind of limitation period, if it is specifically extended, that is extendable only for six months period, that is, the date of any modification or clarification in this regard, from time to time, by the concerned authorities.

18. In this context, the shipping bills concerned, based on which, the petitioner sought for EXIM scrips, are admittedly time barred, as they are three years old at the time of making applications, however, the extended time was given to those bills for further six months period, that is, from the date of clarification letter issued by the respondents on 14.07.2015. From the said date, that is, 14.07.2015, if at all, any time has to be extended, it can only be extended up to six months period, which alone is permissible, in view of para 3.11.19(a) of Hand Book of Procedures.

19. In this context, as per the said procedure, the respondents had a meeting on 05.01.2016, where, they have taken a conscious decision to extend the period of six months from the date of clarification, that is, on 14.07.2015, and if the six months period is extended from 14.07.2015, admittedly, that six months period ends on 14.01.2016, within which period, whoever made applications, those applications would be considered and positively responded by the respondents.

20. This is evident from one of such inter-departmental communication issued in this regard by the respondents, dated 05.01.2016 whereby, they specifically mentioned that, atleast two exporters, one among them is the petitioner, namely, M/s.Sundar Carbon, whose three applications, which were pending before the authority concerned, were cleared positively in favour of them, in view of the extended period of six months.

21. However, insofar as these three applications are concerned,
<https://hcservices.ecourts.gov.in/hcservices/>



admittedly, those applications were filed on 10.02.2016, 08.02.2016 and 11.02.2016, respectively. All these applications were filed, admittedly, beyond the six months limitation period, which ended on 14.01.2016, even as per the extended period from the date of DGFT letter of clarification, dated 14.07.2015.

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22.The extension of six months period, for which, whether, there has been any rational, this Court, infact wanted to know and also on what basis, they extended only six months, why not it for beyond six months period was raised by this Court. In response to the Court's query, the clear answer has been given by the respondents, as stated supra in the counter, and a clarification to that effect has been made by producing the minutes recorded in the MEPZ meeting, dated 05.01.2016, where, they extended the period of six months from 14.07.2015, which is, in fact, in tune with the Hand Book of Procedures referred to above. Therefore, the said extension decision taken by the respondents cannot be found fault with, and within the six months period, whatever applications filed were considered and granted, and beyond six months period, if any such applications filed, those applications were rejected.

23.It is also to be noted that, since shipping bills in question, which were filed in these three cases were admittedly three years old bills, the petitioner could have very well filed these applications with the bills within the six months period. No plausible reason, whatsoever has been given by the petitioner as to why they delayed in filing these applications with the respective shipping bills, within the six months period, therefore, for that reason also, the petitioner cannot seek any indulgence from this Court to interfere with the impugned order, whereby, the applications of the petitioner to get the export scrip has been rejected, ofcourse, with proper reasons.

24.Therefore, for all these reasons, this Court feel that the impugned orders cannot be interfered with, as those orders are to be sustained. Hence, these writ petitions failed, and therefore, all these writ petitions are deserved to be rejected.

25.In the result, these writ petitions are dismissed. However, there shall be no order as to costs.

Sd/-

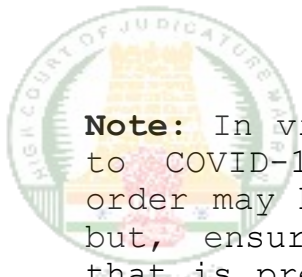
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

PJJL



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

- 1.The Secretary,
Union of India,
Ministry of Commerce and Industry,
Department of Commerce,
Directorate General of Foreign Trade,
Policy Section - 3, Room No.508,
Udyog Bhawan,
New Delhi - 110 011.
- 2.The Joint Director General of Foreign Trade,
Office of Joint Director General of Foreign Trade,
117, 1st Main Road,
K.K.Nagar,
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- 3.The Deputy Director General of Foreign Trade,
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K.K.Nagar,
Madurai.
- 4.The Assistant Director General of Foreign Trade,
Office of Assistant Director General of Foreign Trade,
117, 1st Main Road,
K.K.Nagar,
Madurai.

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-29008[F] dated 14/09/2021)

W.P(MD) Nos.17050,17079 & 17081 of 2019
14.09.2021

NA (CO)
KB(12.01.2022) 8P 6C