IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

W.P.No.14782 of 2010
and
W.M.P.No.1 of 2010

M/s.Kaleesuwari Refinery Pvt. Ltd.,
Rep. by its Vice President [Finance & Accounts], R.Ravi,
Old No.21, new No.53, Rajasekaran Street,
Radhakrishnan Salai,
Mylapore,
Chennai - 600 004. ... Petitioner

vs.

1. Union of India,
Rep. by its Secretary,
Ministry of Commerce & Industry,
Udyog Bhawan,
New Delhi - 110 011.

2. Additional Director General of Foreign Trade,
Ministry of Commerce & Industry,
Directorate General of Foreign Trade,
Udyog Bhawan,
New Delhi - 110 011.

3. The Joint Director General of Foreign Trade,
Ministry of Commerce,
Office of the Joint Director General of Foreign Trade,
Ministry of Commerce & Industry,
Shastri Bhavan,
Chennai - 600 006.

4. Foreign Trade Development Officer,
Office of the Joint Director General of Foreign Trade,
Ministry of Commerce & Industry,
Shastri Bhavan,
Chennai - 600 006. ... Respondents

Prayer: Writ 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 third respondent viz., File No.04/21/40/709/AM09 and quashing the order dated 21.06.2010 issued by the third respondent and direct the respondent herein to permit the petitioner to complete the exports and imports as prescribed in the aforesaid advance authorization.

For Petitioners : Mr.S.Murugappan assisted by M/s.M.S.Harsha Prabhu

For Respondents : Mr.K.S.Jeya Ganeshan, Senior Panel Counsel (GOI)

O R D E R

This writ petition has been filed calling for the records of the third respondent viz., File No.04/21/40/709/AM09 and quashing the order dated 21.06.2010 issued by the third respondent and direct the respondent herein to permit the petitioner to complete the exports and imports as prescribed in the aforesaid advance authorization.

2.The learned counsel appearing for the petitioner submitted that the petitioner is a manufacturer and exporter of edible oils. For the process of export the Government has provided the Export Incentive Schemes. One such scheme called as "Advance Authorization Scheme". By the scheme the exporters upon completion of the export obligation is permitted to import various inputs duty free in terms of the relevant policy provisions. The petitioner was granted with Advance Authorization on 24.12.2008. It is relevant to note that Notification No.85 dated 17.03.2008, Notification No.60 dated 20.11.2008, Notification No.18 dated 02.12.2009, Notification No.85 dated 17.03.2008, Notification No.98 dated 17.03.2009 and Notification No.4 dated 0409.2009 were issued in respect of the relaxation and concession with regard to export of edible oils upto the limit of 250 MT. The petitioner is availing the scheme and exporting edible oils and importing goods free of customs duty.

3.He further submitted that during the pendency the Advance Authorization dated 24.12.2008, the petitioner was also applied for another Advance Authorization for exporting the refined sunflower edible oils in a brand consumer packs. But to the shock and surprise of the petitioner a communication dated 21.07.2009, was received from the fourth respondent and it was informed that the application was rejected in view of the prohibition imposed vide Notification No.85 dated 17.03.2008 read with Notification No.98 dated 17.03.2009. It is also relevant to note that the respondents by letter dated 28.05.2010, directed the petitioner to surrender the Advance Authorization and to regularize its imports with payments of Customs duty. The petitioner has challenged the communication dated 28.05.2010, by way of a Writ Petition in W.P.No.5719 of 2010. This Court after considering various notifications issued by the respondents has set aside the order passed by the respondents and so far directed the petitioner to surrender the Advance Authorization on the ground of non application of mind.

4.He further contended that according to the order dated 15.06.2012, against the general brand of exporting the edible oil, there is a specific exemption or consumption with regard to export of edible oils not exhausting 10,000 tonnes. Therefore not applying the mind to the exemption clause and the order passed therein set aside. Consequent to the order to surrender the Advance Authorization, the respondent was cancelled the Advance Authorization by order dated 21.06.2010. It was stated that “It was observed that the item of export is prohibited and letter has been issued to the firm on 28.05.2010 to surrender the above said authorisation and no reply received from the firm”. Hence the Advance Authorization was cancelled, even though Notification No.60 relied by this Court specifically on the ground that relaxing the ban order with regard to the export of 120 tonnes of edible oils, the respondents failed to consider the exemption clause and without application of mind pass the consequential order also.

5.The learned Senior Panel Counsel appearing for the respondents vehemently contended that as per Section 9(4) of Foreign Trade (Development and Regulation) Act, 1992, the Director General or the Officer authorised is empowered to suspend or cancel any licence, certificate, Scrip or any instrument bestowing financial or fiscal benefits granted under this Act for the reason to be recorded. In the existing case as discussed earlier the exemption clause provided in the notification was not at all considered and no reason was recorded for not granting exemption and cancellation order was passed only for the reason that the petitioner has not submitted his reply.

6.He further contended that under Section 15 of Chapter V of the Act, there is a remedy of filing appeal against the order is available. When there is a provision of appeal without exhausting the appeal remedy the petitioner cannot maintain the writ petition.

7.At the outset, the matter had been admitted by this Court in the year 2010, after a period of 12 years, the non-exhaustion of the appeal remedy is immaterial and this Court under Article 226 of the Constitution of India. Secondly, the learned counsel appearing for the petitioner would also submit that already filed the appeal and after exhausting the appeal remedy they approached this Court, therefore on this ground also he contended that the appeal remedy is not exhausted and it is not suffice.

8.The learned counsel appearing for the petitioner submitted that the petitioner has preferred an appeal against the rejection of his application dated 20.07.2009, against the order in appeal dated 19.11.2009, against which he filed the writ petition in W.P.No.5719 of 2010, which was set aside by this Court by its order dated 15.06.2012. After setting aside the above said order dated 15.06.2012, consequential order in appeal passed on 19.11.2009, wherein the respondents have directed the petitioner to surrender the Advance Authorization granted by the respondent dated 28.05.2010, since no reply was received the impugned order was passed and the licence of the petitioner company was cancelled.

9.Heard the submissions of both the sides.

10.After the order dated 28.05.2010, to surrender the Advance Authorization granting exemption from payment of customs duty had been set aside by this Court and the consequential order does not stand on its own leg. It is further even assuming that it was an independent order passed without application of mind and it was mechanically passed for non furnishing of reply and not on merits. Therefore on the reason stated above the impugned order is to be set aside and the Writ Petition is to be allowed.

11.Accordingly, this writ petition stands allowed and the impugned order is set aside. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Union of India,
   Ministry of Commerce & Industry,
   Udyog Bhawan,
   New Delhi – 110 011.

2. The Additional Director General of Foreign Trade,
   Ministry of Commerce & Industry,
   Directorate General of Foreign Trade,
   Udyog Bhawan,
   New Delhi – 110 011.

3. The Joint Director General of Foreign Trade,
   Ministry of Commerce,
   Office of the Joint Director General of Foreign Trade,
   Ministry of Commerce & Industry,
   Shastri Bhavan,
   Chennai – 600 006.

4. The Foreign Trade Development Officer,
   Office of the Joint Director General of Foreign Trade,
   Ministry of Commerce & Industry,
   Shastri Bhavan,
   Chennai – 600 006.

+1cc to Mr.S.Murugappan, Advocate, S.R.No.19475

+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.19744

W.P.No.14782 of 2010
and
W.M.P.No.1 of 2010

SSI(CO)
SU(06/06/2022)