IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WRIT APPEAL NO.407 OF 2022

M/s.Ramsays Corporation Private Limited,
(rep. by its Managing Director, R.Krishnakumar),
No.18, Lodd Govindass Nagar Road,
Mount Road, Chennai 600 002.

... Appellant

vs.

The Commissioner of Customs,
Chennai-IV Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 07.01.2022 passed by this Court in W.P.No.24567 of 2021.

Prayer in W.P.No.24567 of 2021:-
Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned Order-in-Original No.85497 of 2021 dated 30.07.2021 of the respondent and quash the same.

For Appellant : Mr.A.Mohamed Ismail

For Respondent : Mr.R.Gunaalan,
Jr. Standing Counsel for Customs & GST

J U D G M E N T
(Judgment of the Court delivered by MOHAMMED SHAFFIQ, J.)

This intra-Court Appeal is filed by the Writ Petitioner challenging the order dated 07.01.2022 passed by the learned Single Judge in W.P.No.24567 of 2021.

2. The Appellant/Writ Petitioner had availed the Export Promotion Capital Goods (EPCG) Scheme, whereby, the Appellant was permitted to import machinery with a total assessable value of Rs.3,61,48,776/- with 'nil' rate of BCD. The duty that was foregone worked out to Rs.86,37,700/-. The above said EPCG Authorisation was issued subject to the condition that, the importer had to fulfill the export obligation as prescribed in the above said Notification read with the conditions of EPCG Authorisation. In terms of the EPCG Scheme, the Appellant had to discharge the export obligation on or before 15.11.2016.

3. It is the submission of the Appellant that, they had discharged the export obligation in terms of EPCG Scheme. After completion of the said export obligation, the Appellant had submitted copies of shipping bills, Bank certificate, Chartered Accountant Certificate and other relevant documents as annexure to letter dated 03.03.2014, which was duly acknowledged by the office of the ADGFT. However, there was delay in obtaining Export Obligation Discharge Certificate (EODC), despite the fact that, the process of issuance of EODC was underway with the Office of the DGFT.

4. In the meanwhile, a Show Cause Notice dated 11.06.2021 was issued by the 1st Respondent proposing to confiscate capital goods imported under EPCG Scheme apart from demanding duty for non-fulfillment of Export Obligation along with applicable interest and penalty on the premise that the Appellant had failed to fulfill the Export Obligation and produce the Export Obligation Discharge Certificate (EODC) from the concerned ADGFT. The Appellant appeared for personal hearing and also filed their written objections. The Appellant, after submitting the documents to ADGFT on 03.03.2014, had thereafter sent reminders to ADGFT on 20.11.2017 and 01.07.2021, for issuance of Export Obligation Discharge Certificate (EODC)/ letter of redemption. There was delay on the part of the ADGFT to issue the Export Obligation Discharge Certificate (EODC)/letter of redemption. The 1st Respondent proceeded to confirm his proposal on finding that the ADGFT had issued deficiency letters on 23.01.2019 and 12.07.2021, which were not cured by the importer.

5. We find that, subsequent to the passing of the impugned order, Redemption Letter/Export Obligation Discharge Certificate (EODC) dated 27.10.2021 has been issued by the Assistant Director General of Foreign Trade, Chennai, which would clearly indicate that, the Petitioner had discharged the entire Export Obligation in compliance with the EPCG Scheme.

6. There can be no dispute about the fact that, the Appellant had discharged their Export Obligation, as would be

evident from the Redemption Certificate issued on 27.10.2021. The production of Export Obligation Discharge Certificate (EODC) in terms of EPCG scheme is necessary for the importers to claim benefit under the said Scheme and delay in producing the Export Obligation Discharge Certificate (EODC) cannot result in denial of the benefit, more so, when the assessee/importer has admittedly discharged the Export Obligation and has also furnished the requisite documents before the appropriate authority for issuance of Export Obligation Discharge Certificate (EODC). A condition which is dependent on action by public authorities over which an assessee/importer has no control and, delay on the part of a public authority cannot result in denial of the benefit extended in larger public interest. Thus, the delay in obtaining Export Obligation Discharge Certificate (EODC) cannot result in denial of benefit under the EPCG Scheme, which itself has been formulated to promote export and earn foreign exchange. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs (Imports) v. Tullow India Operations Ltd., reported in (2005) 13 SCC 789, relevant portion of which, is extracted hereunder:

> "21. Both the importers are licensees. Indisputably, they were entitled to the benefit of the exemption notification subject, of course, to the condition that they would produce the essentiality certificate granted by the Directorate General of Hydrocarbons at the time of importation of goods. Grant of essentiality certificate was not in the hands of the assessees. It was the function of a department of the Central Government. The essentiality certificate admittedly was not granted by the Directorate General of Hydrocarbons within a reasonable time. The importers could not be blamed therefor. It is possible that delay in granting the said essentiality certificate was by way of default on the part of the authorities concerned.
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> ....
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> 26. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas of the Government of India. The functions performed by it are public functions. The notification never contemplated that a public functionary, having regard to the importance of the subject-matter and in particular when such importations are being made in public interest, would not dispose of the application for grant of essentiality certificate within a reasonable

> time so as to enable the importer to avail the benefit thereof. Applicants for grant of such certificates, having regard to their importance, should have been processed by the Directorate General of Hydrocarbons as expeditiously as possible but they did not choose to do so probably having regard to the fact that no time schedule therefor was prescribed. It is trite that when a public functionary is required to discharge its public functions within a time specified therefor, the same would be construed to be directory in nature. (See P.T. Rajan v. T.P.M. Sahir [(2003) 8 SCC 498] and Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC 776] .)"

7. The above judgment has also been followed in the case of O.N.G.C. Limited vs. Commissioner of Customs, Mumbai reported in (2006) 7 SCC 403. Importantly, the above principle was also applied by the Hon'ble Supreme Court while construing an Exemption Notification in the case of Mangalore Chemicals reported in (1992) Supp 1 SCC 21, which stands approved by the decision of the Constitution Bench of the Hon'ble Supreme Court in Dilip Kumar case reported in (2018) 9 SCC 1.

8. In the present case, the Appellant has discharged their Export Obligation and the same is also evident from the Redemption Letter dated 27.10.2021 and that, the delay in obtaining the same from ADGFT ought not result in denial of the benefit under EPCG Scheme.

9. In view of the same, the Respondent's order dated 30.07.2021 impugned in W.P.No.24567 of 2021, is set aside and the Appellant/Writ Petitioner is permitted to produce the documents in support of their claim to demonstrate that, their export obligation has been discharged, within a period of eight weeks from the date of receipt of a copy of this judgment.

In fine, the Writ Appeal is allowed on the above terms. No costs. Consequently, connected C.M.P.No.3103 of 2022 is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

(aeb/mka)

To:

The Commissioner of Customs,
Chennai-IV Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.A.Mohamed Ismail, Advocate, S.R.No.13579

+1cc to Mr.R.Gunaalan, Advocate (Junior Standing Counsel for Customs), S.R.No.14292

W.A.No.407 of 2022

KV(CO)
RLP(22/03/2022)