IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.7951 OF 2022
AND
W.M.P.NO.7943 OF 2022

M/s.Coramandel Electronics
Represented by its Partner,
Plot No.39, Developed Plot Estate,
Perungudi, Chennai - 600 096. ...Petitioner

Vs

1.Deputy Commissioner of Customs (EODC),
New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai - 600 027.

2.The Branch Manager,
Indian Overseas Bank,
No.6, (Old No.85),
First Avenue,
Chennai - 600 020.

3.Joint Director General of Foreign Trade,
O/o.Zonal Additional Director
General of Foreign Trade,
4th & 5th Floor, Shastri Bhavan Annexe,
26, Haddows Road, Chennai - 600 006. ...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the Communication letter issued from F.No.S45/304/2008-DEEC-EODC dated 17.03.2022 by the 1st respondent and quash the same.

For Petitioner	:	Mrs.V.Pramila
For 1st Respondent	:	Mrs.Hema Muralikrishnan Sr.Stading Counsel
For 3rd Respondent	:	Mr.V.Chandrasekaran (CGSC)

ORDER

The prayer sought for herein is for a writ of certiorari to call for the records pertaining to the Communication letter issued from F.No.S45/ 304/2008-DEEC-EODC dated 17.03.2022 by the 1st respondent and quash the same.

2. The petitioner is an Exporter. With regard to the import, which is the input being utilised for the manufacturing, duty exemption was availed by the petitioner after getting the necessary export obligation from the 3rd respondent i.e., Joint Director General of Foreign Trade, Government of India.

3. According to the petitioner counsel, after availing the benefit of waiver of customs duty for import, subsequently, the export obligation has been fulfilled and after fulfilling the export obligation, when application was made on 21.10.2013 to the 3rd respondent to issue Export Obligation Discharge Certificate, i.e., EODC, the same has been kept pending without doing any decision for several years.

4. Ultimately on 07.12.2021 when they issued a notice, that was properly replied by the petitioner on 27.12.2021, despite this, even thereafter, the 3rd respondent has not come forward to issue the EODC.

5. In the meanwhile, in view of the EODC is not issued by the 3rd respondent and the same therefore could not be produced by the petitioner before the 1st respondent Customs Authority, they issued a notice on 10.03.2022 to invoke the Bank guarantee which has already been given by the petitioner at the time of availing the import duty.

6. In response to the said 10.03.2022 notice, the petitioner had in fact appeared before the 1st respondent and explained that, the request is pending before the 3rd respondent who has to issue the EODC and in these kind of cases, without awaiting the EODC to be issued and production of the same by the Exporter, the Customs Authorities, based on the input supplied by the exporter with regard to the export obligation, can proceed further and this has been indicated in the circular issued by the Government of India, Ministry of Finance, Department of Revenue, CBEC, Drawback Division dated 02.05.2017.

7. Therefore, the petitioner wanted to avail the benefit of the said circular dated 02.05.2017.

8. Despite these efforts having been taken by the petitioner, now the 1st respondent issued a communication on 17.03.2022 to the Banker of the petitioner stating that, on or

before 15.04.2022 the Bank guarantee issued by the petitioner can be invoked by the Banker to and in favour of the 1st respondent Corporation. Aggrieved over the same, the present writ petition has been filed.

9. Reiterating the aforestated, the learned counsel appearing for the petitioner would submit that, the delay in giving EODC is caused only by the 3rd respondent, therefore, for no fault of him, the petitioner cannot be penalised by invoking the Bank guarantee given by the petitioner, hence, the order impugned dated 17.03.2022 is infirm, she submitted.

10. Heard Mrs.Hema Muralikrishanan, learned Senior Standing Counsel appearing for the 1st respondent.

11. The learned Senior Standing Counsel for Customs would submit that, if the issue is pending before the 3rd respondent, a time frame may be given to the 3rd respondent, before which, let they consider and pass orders on the request of the petitioner for issuance of EODC and the moment the EODC is given, the same can be produced before the 1st respondent. Till such time, the 1st respondent can await without proceeding further on the impugned order dated 17.03.2022.

12. Having regard to the said submission made by the learned counsel appearing for both sides and having considered the said factual matrix, this Court feels that, a direction can be given to the 3rd respondent to pass orders on the application of the petitioner dated 21.10.2013 within a time frame for issuance of EODC and based on which, further action could be decided by the 1st respondent, till such time, the impugned order can be kept in abeyance.

13. In view of the above stated, this Court is inclined to dispose of this writ petition with the following orders:

(i) That there shall be a direction to the 3rd respondent to pass orders on the application of the petitioner dated 21.10.2013 by taking into account the reply submitted by the petitioner dated 27.12.2021, in response to the show cause dated 07.12.2021 and accordingly pass orders for grant of EODC if the petitioner is otherwise eligible for the same, within a period of four weeks from the date of receipt of a copy of this order.

(ii) Once the EODC is issued by the 3rd respondent, the same can be produced by the petitioner to the 1st respondent and thereafter, the 1st respondent can act upon accordingly.

(iii) Till such time, i.e., the EODC is produced or the decision is taken otherwise by the 3rd respondent on the application of the petitioner, the impugned order dated 17.03.2022 shall be kept in abeyance.

14. With these observations and directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

Sgl

To

1.The Deputy Commissioner of Customs (EODC),
New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai – 600 027.

2.The Branch Manager,
Indian Overseas Bank,
No.6, (Old No.85),
Indira Nagar, Adayar,
First Avenue, Chennai – 600 020.

3.The Joint Director General of Foreign Trade,
O/o.Zonal Additional Director
General of Foreign Trade,
4^{th} & 5^{th} Floor, Shastri Bhavan Annexe,
26, Haddows Road, Chennai – 600 006.

+1cc to M/s.V.Pramila, Advocate, Sr.No.23915

+1cc to M/s.Hema Muralikrishnan, Advocate, Sr.No.23522

W.P.No.7951 of 2022

RR(CO)
RVM(12/04/2022)