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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.37890 OF 2015

AND

M.P.NO.1 OF 2015

M/s.R.A.Textiles Process (P) Ltd.,
Represented by its Managing Director Mr.A.Selvaraj,
Post Box No.279, 43, Mettupalayam Extension,
P.N.Road, Tirupur - 641 602.

... Petitioner

-vs-

1. Joint Director General of Foreign Trade,
1544, India Life Building (Annexe), I Floor,
Trichy Road,
Coimbatore - 641 018.

2. Deputy Director General of Foreign Trade,
1544, India Life Building (Annexe), I Floor,
Trichy Road, Coimbatore - 641 018.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent culminating in the order dated 22.9.2015 issued from F.No.32/36/021/00008/AM 02 and quashing the same and directing the second respondent to examine the documents already filed with the 2nd respondent and issue discharge certificate, if otherwise, the documents are in order in accordance with law.

For Petitioner : Mr.S.Murugappan

For Respondents : No appearance



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O R D E R

The order dated 22.09.2015 passed by the Deputy Director General of Foreign Trade is under challenge in the present writ petition.

2. The order-in-original states that no further license shall be issued to the petitioner firm or to any other firm in which the Proprietor/Partners/Directors of the firm, are directly involved in the day-to-day activities of the firm as per Provision of Handbook read with Clause 7(1) of the Foreign Trade (Development & Regulation) Act, 1992.

3. The learned counsel for the petitioner mainly contended that the order impugned was passed without considering any of the document filed by the petitioner. The petitioner filed an additional typed set of papers along with the Writ Petition on 06.01.2022 enclosing the letter dated 20.08.2009. The said letter states that the petitioner had enclosed some documents to establish that they fulfilled their export obligation. However, those documents were not filed along with the writ petition. The petitioner has chosen to file the same by way of additional typed set of papers on 06.01.2022.

4. The order impugned itself states that "any person / party aggrieved by this order" may, under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 file an appeal against the same to the appropriate authority viz., The Additional Director General of Foreign Trade within 45 days from the date of service of this adjudication order together with a copy of this order and a complete set of evidence in the form of Annexures to the appeal relied upon in support of the appeal.

5. The order-in-original further contemplates the procedures to be followed for the purpose of filing an appeal. The petitioner instead of preferring an appeal against the order-in-original, has chosen to file a writ petition and made a submission that the respondent has not considered all the documents filed by the petitioner and therefore, the matter is to be remitted back for the purpose of reconsidering the documents filed by the petitioner.

6. This Court is of the considered opinion that remanding the matter back to the Original Authority may be an easy way for the Courts. However, any such remand is to be made, if it is absolutely necessary. All the matters are to be decided on merits as remand is an exception and to be made only if there is any gross violation of procedures or non-consideration of documents, evidence or otherwise, which caused prejudice to the interest of either of the parties. If there is



a provision for statutory appeal, remand is not desirable as such errors, non-consideration may be rectified by the Appellate Authorities. Therefore, remand is an exception and the aggrieved person must prefer appeal for the purpose of rectification of errors crept-in in the orders passed by the Original Authority.

7. The Appellate Authority is exercising quasi judicial power and they are empowered to adjudicate all the issues by verifying the original records and evidences and also the legal grounds raised between the parties. The Appellate Authorities are well within the power to summon the original records, scrutinize the same for the purpose of forming an opinion. Thus, efficacious alternate remedy contemplated under the statutes must be exhausted at all circumstances and dispensing with the appeal is only an exception to be done, if there is any gross injustice.

8. The power of Judicial Review of the High Court is to scrutinize the process through which a decision is taken by the Authority competent in consonance with the statutes and the Rules, but not the decision itself. Therefore, remand may not be appropriate in such circumstances, when an efficacious alternate appeal remedy is contemplated. In the present case, even in the order in original itself, the petitioner was reminded of about the appeal remedy available to him, but instead of filing appeal, the petitioner has chosen to file the writ petition, which can never be appreciated. Now, the petitioner filed an additional typed set of papers on 06.01.2022, after a lapse of seven years from the date of filing of the writ petition by stating that the petitioner has furnished certain documents to establish that he fulfilled the export obligations. Such procedures or filing of documents in a writ proceedings at a belated stage undoubtedly require an adjudication. High Court cannot undertake such an adjudication in a writ proceedings.

9. Be that as it may, it is for the Appellate Authority to consider all these aspects by affording opportunity to the parties concerned. However, in the event of filing of appeal, the period, during which the writ petition was pending before this Court, is to be taken into consideration for the purpose of condoning the delay, if any application is made to that effect. Thus, the petitioner is at liberty to prefer appeal before the Appellate Authority, without any loss of time.

10. The learned counsel for the petitioner, at this stage, submitted that the petitioner has sent a letter dated 28.05.2015, wherein a reference has been made regarding the letter dated 20.08.2019. However, it is for the Appellate



Authority to take note of all these aspects, if any appeal is filed and take a decision on merits and in accordance with law.

11. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nti/Raja

To:

1. The Joint Director General of Foreign Trade,
1544, India Life Building (Annexe), I Floor,
Trichy Road,
Coimbatore -641 018.
2. The Deputy Director General of Foreign Trade,
1544, India Life Building (Annexe), I Floor,
Trichy Road,
Coimbatore - 641 018.

+lcc to Mr.S.Murugappan, Advocate, S.R.No.2323

W.P.No. 37890 of 2015

NMI (CO)
PM/28/02/2022