



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.NO. 4982 OF 2015

AND

M.P.NO. 1 OF 2015

M/s. Viki Industries Ltd.,
Represented by its Director, Gowtham Reddy
No.1, Krishna Street, Nungambakkam
Chennai - 600 034.

... Petitioner

Vs.

1. The Foreign Trade Development Officer
Office of the Joint Director General of
Foreign Trade
Shastri Bhavan Annexe, 26, Haddows Road
Nungambakkam, Chennai - 600 006.

2. The Additional Director General of Foreign Trade
Shastri Bhavan Annexe, 26, Haddows Road
Nungambakkam,
Chennai - 600 006.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings in F.No.04/21/40/464/AM09 dated 07.01.2015 issued by the first respondent and quash the same.

For Petitioner : Mr. M.A.Mudimannan

For Respondents : Mr. P. Mahaadevan
SCGSC

O R D E R

The order of penalty directing the writ petitioner to pay the penalty amount of Rs.1,81,405/- by proceedings dated 07.01.2015 is under challenge in the present Writ Petition.



2. The petitioner is engaged in the manufacture of Iron and Steel products at a regular exporter of the finished products. The petitioner imported raw materials free duty and the same to be utilised in the manufacture of the finished products and had exported.

3. The learned counsel for the petitioner made a submission that the petitioner had fulfilled all the export obligations as far as the subject transactions are concerned and the Ministry of Commerce and Industry issued a redemption letter on 25.02.2013. The redemption letter clearly states that export obligations made in full value as well as in quantity term, in provision to import made. Whiles, the respondent shockingly issued the impugned order of penalty by proceedings dated 07.01.2015 stating that the Finance Audit have raised objections for non recovery of penalty for negative value addition.

4. It is contended that if at all an audit objections are raised regarding certain dues, then the petitioner is entitled for an opportunity to defend the case in the manner known to law. The respondents had taken a unilateral decision and issued the impugned order of penalty affecting the rights of the petitioner. Thus the order is to be set aside.

5. The learned Standing Central Government Standing Counsel appearing on behalf of the respondents disputed the contentions by stating that whenever the audit objections have been raised, based on the audit objections, the orders are issued and the factum regarding the non recovery of penalty for negative value addition is known to the petitioner and therefore, this Writ Petition is to be rejected.

6. The Foreign Trade (Development and Regulation) Act, 1992 more specifically Section 14 contemplates giving of opportunity to the owner of the goods, etc. Accordingly, no order imposing a penalty or of adjudication of confiscation shall be made unless the owner of the goods or conveyance, or other person concerned, has been given a notice in writing:-

(a) informing him of the grounds on which it is proposed to impose a penalty or to confiscate such goods or conveyance; and

(b) to make a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty or confiscation mentioned therein, and, if he so desires, of being heard in the matter.

7. In view of the above provisions, the petitioner is entitled for an opportunity to defend his case. However, there



is no reference regarding the opportunity proceeded to the writ petitioner and therefore, the order impugned is in violation of the principles of natural justice.

8. Accordingly, the first respondent is directed to issue a show cause notice setting out all the facts and circumstances as well as the details in compliance with the requirements of the provisions of the Act and Rules enabling the petitioner to submit their explanations to the objections and on receipt of the same, issues shall be decided on merits and in accordance with law as expeditiously as possible.

9. With the above said direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Foreign Trade Development Officer
Office of the Joint Director General of
Foreign Trade
Shastri Bhavan Annexe, 26, Haddows Road
Nungambakkam, Chennai - 600 006.
2. The Additional Director General of Foreign Trade
Shastri Bhavan Annexe, 26, Haddows Road
Nungambakkam,
Chennai - 600 006.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.3778
+1cc to Mr. P. Mahaadevan, Advocate, S.R.No.3764

W.P.No. 4982 of 2015
And
M.P.No. 1 of 2015

PMK (CO)
PM/08/02/2022