IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WP.No.3264/2016

Alstom T&D India Limited
19/1, GST Road, Pallavaram
Chennai 600 043
rep.by its Senior Mangaer [Indirect Taxation]
Mr.S.Sivaramakrishnan ... Petitioner

Vs

1. The Assistant Director General of Foreign Trade
   O/o.The Zonal Director General of Foreign Trade
   Shashtri Bhavan Annexe, 4^{th} & 5^{th} Floor
   26, Haddows Road, Chennai 600 006.

2. The Director General of Foreign Trade
   Udyog Bhavan, H Wing, Maulana Azad Road
   New Delhi 110 011.

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

Prayer: Writ Petition filed Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on file F.No.04/79/74/119/AM 06 of the 3^{rd} respondent and to quash order dated 14.10.2015 passed by the 3^{rd} respondent and direct the respondents to grant DFCE license to the petitioner for the licensing year 2003-04.

For Petitioner : Mr.Joseph Prabakar

For RR 1 to 3 : Mr.V.Chandrasekaran
Senior Panel Counsel for
Government of India

ORDER

(1) The challenge in the writ petition is to the denial of Duty Free Credit Entitlement [DFCE] Certificate to the petitioner.

(2) The petitioner Company which is a producer of electrical goods is also an Exporter of electrical equipments. The Government of India had evolved a scheme for encouraging exports. The scheme provided for issuance of a DFCE Certificate if an exporter shows an incremental growth on the quantum of exports year on year. As per the scheme, if the exporter shows increase over and above 25% in the value of the goods exported, he would be entitled to concession in import duty for the value of 10% of the increase alone. For eg., if an exporter achieves a growth of about Rs.5 Crores over the previous year's exports, he would be entitled to a duty concession of a value of Rs.50 Lakhs for which he can import goods worth Rs.50 lakhs without customs duty subject to the condition that those goods will be used by the importer in the manufacturing process. There is no dispute regarding the fact that the petitioner would use the imported goods in the manufacturing process. The only dispute is with regard to the entitlement of the petitioner.

(3) Though the petitioner was an exporter, it did not register itself as a Star Export House during the years 2003-04. The petitioner made an application for registration belatedly and the Government of India by its order dated 16.06.2006 while condoning the delay, permitted the petitioner to register itself and grant the petitioner the status of an Export House as on 01.04.2003. The order passed by the Union of India on 16.06.2006 also makes it clear that it would be entitled to the DFCE benefits in relaxation of the policy if required. However, the petitioner's application for issue of DFCE Certificate was rejected on 27.02.2013. The petitioner challenged the said rejection in WP.No.7270/2014 mainly on the ground that the rejection is opposed to the Amendment of the Policy issued on 07.04.2005 under Public Notice No.69/2004-09. This Court while setting aside the order, directed the respondents to re-consider the application of the petitioner in the light of the Amendment introduced by the Public Notice referred to above. The operative portion of the order of this Court dated 12.02.2015 reads as follows:-

> ''6.It is to be pointed out that though an opportunity of personal hearing was granted, the impugned order does not reflect as to how

and in what manner the public notice No.69/2004-09 dated 07.04.2005 is not applicable to the petitioner and in what way still the petitioner has to satisfy the recognition for the base year. Therefore, the impugned order is passed without sufficient reasons calling for interference of this Court. This court is of the view that the matter should be remanded back for fresh consideration by the respondent duly taking note of the amendment and also after affording an opportunity of personal hearing.

7.Accordingly, the writ petition is allowed and the impugned order dated 27.02.2012 passed by the respondent is set aside. The matter is remanded back to the 1st respondent for fresh consideration who shall hear the petitioner in person and pass appropriate orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs.''

(4) After the remand, again the authorities have rejected the claim of the petitioner concluding that the amendment has not changed the position and the petitioner should have been a status holder for the years 2002 and 2003 also in order to be held entitled to the benefits of the scheme.

(5) The respondents have also filed a counter.

(6) Mr.Joseph Prabakar, learned counsel for the petitioner would draw my attention to the amendment which reads as follows:-

Existing Provision

The scheme will be applicable to status holders who where also status holders as on 31.03.2003 and who had achieved minimum export turnover of Rs.25 Crores in the year 2003-2004.

Amended Provision

The scheme will be applicable in status holders/Star Export House who had achieved minimum export turnover of Rs.25 Crores in the year 2003-04.

(7) According to Mr.Joseph Prabakar, learned counsel for the petitioner, the result of the amendment would be that in order to claim the benefit, the applicant need not be a status holder as on 31.03.2003. It is enough if he is recognized as a Star Export House and achieved a minimum export turnover of Rs.25 Crores in the year 2003-04. It is this consequence of the amendment which have been evidently overlooked by the authorities while deciding the claim of the petitioner, according to the learned counsel for the petitioner.

(8) Mr.V.Chandrasekaran, learned Senior Panel Counsel for the Union of India would submit that the amendment does not alter the requirement of the applicant being a status holder as on 31.03.2003. According to him, only those who are recognized as status holders for the period from 01.04.2002 to 31.03.2003 would qualify to obtain DFCE Certificate. In the counter also, the same plea is raised.

(9) I am unable to concur with the submissions of the learned counsel for the respondents. If the interpretation that is sought to be made on the amendment is accepted, the whole amendment would be rendered unnecessary. Originally, as per the scheme, an applicant in order to claim DFCE Certificate should have been a status holder as on 31.03.2003 and should have achieved a minimum export turnover of Rs.25 Crores in the year 2003-2004. As per the amended provision, the requirement that the applicant should be a status holder or a Star Export House as on 31.03.2003 is dispensed with. All that the amended provision requires is that the applicant should be a status holder or a Star Export House which had achieved a minimum export turnover of Rs.25 Crores in the year 2003-04. There is no dispute as to the fact that the petitioner has exported turnover of Rs.25 Crores for the year 2003-04.

(10) The dispute is as to whether the petitioner was status holder or a Star Export House. The said question is answered by the order of the very Department made on 16.06.2006 wherein the petitioner has been recognized as a Star Export House as on 01.04.2003. Therefore, it is clear that the petitioner had satisfied the requirements of the amended provisions of the scheme. The stand of the respondents that de hors the amendment, the petitioner should have been a status holder for the year 2002-03 is in negation of the rights conferred on the petitioner under the Amendment and therefore, I am unable to sustain the said stand.

(11) The writ petition will stand allowed. The order impugned is set aside. There will be a direction to the respondents to issue the relevant benefit under the current scheme known as ''Merchandise Exports from India'' Scheme formerly known as ''DFCE Scheme/Target Plus Scheme'' to the petitioner as claimed by the petitioner. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

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+1cc to Mr.Joseph Prabakar, Advocate SR. No. 42710

WP.No.3264/2016

SVI (CO)
PR (15/07/2022)