



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.NO.3788 OF 2016

AND

W.M.P.NO.3140 OF 2016

M/s.Texx One Pvt. Ltd.,
Represented by Mr.K.Sundar,
Its Senior Manager (Finance & Accounts),
H.O. Raja Annamalai Building,
New No.72, Old No.19,
Marshall's Road, Egmore,
Chennai - 600 008.

... Petitioner

.Vs.

1. The Director General of Foreign Trade,
The Government of India,
Ministry of Commerce & Industry,
Udyog Bhavan,
New Delhi - 110 001.
2. The Additional Director General
of Foreign Trade,
The Government of India,
Ministry of Commerce & Industry,
Udyog Bhavan,
New Delhi - 110 001.
3. The Joint Director General
of Foreign Trade,
4th & 5th Floor,
Shastri Bhavan Annexe,
No.26, Haddows Road,
Chennai - 600 006.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent dated 12.12.2014 bearing File No.11/421/2012-13/ECA-1/666 and



consequently, the Order-in-Original dated 12.04.2013 passed from File No.04/24/040/00226/AM05 by the third respondent herein and to direct the third respondent to issue Export Obligation Discharge Certificate (EODC) to the petitioner for redemption liability under Advance Licence No.0410066110 dated 10/01/2005.

(Prayer amended as per order dated 22.02.2022 in W.M.P.No.16490 of 2019 in W.P.No.3788 of 2016)

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.Manoharan
For Mr.M.Karthikeyan
For R1 & R2

Mr.R.Vasudevan
For R3

O R D E R

(The case has been heard through video conference)

This Writ Petition has been filed challenging the order passed by the 1st respondent imposing a fiscal penalty of Rs.14,00,000/- for non-fulfillment of export obligation.

2. Brief facts leading to the filing of this Writ Petition is as follows:-

The petitioner has obtained advance authorisation license for the value of Rs.13,45,452/- for import of certain goods, duty free from the office of Deputy Director General of Foreign Trade, Chennai, with an obligation to export resultant product as specified in the license for the value of Rs.17,42,071.50, within 18/24 months from the date of issue of the license. Alleging that, the petitioner has failed to prove the fulfillment of export obligation, the proceedings has been initiated and order-in-original was passed by the 3rd respondent imposing fiscal penalty of Rs.14,00,000/-. Challenging the same, the petitioner has filed an appeal before the 2nd respondent and the appellate authority has also dismissed the appeal stating that, the petitioner did not produce any proof for fulfilling the export obligation and the review petition filed by the petitioner was also dismissed by the 1st respondent. Now, challenging all those orders, the present Writ Petition has been filed.



3. Mr.S.Murugappan, learned counsel appearing for petitioner would content that, the petitioner has obtained advance authorisation license with an obligation to export resultant products and he had fulfilled the obligation. The petitioner has also produced the relevant receipts before the concerned authority, however, since the license number has not been mentioned in the receipts, the authorities have come to a conclusion that the petitioner has not fulfilled the export obligation, hence, imposed fine. The learned counsel would further submit that, the petitioner is ready and willing to produce all the receipts along with relevant license number and prayed that the authorities may be directed to consider the same and pass suitable orders.

4. The respondents have filed a counter affidavit stating that, the invoices submitted by the petitioner did not contain file number or license number, hence, it cannot be presumed that supplies were made against that license. Even though the opportunity was given to the petitioner by the appellate authority, the petitioner failed to utilise that opportunity and the petitioner has failed to submit invoices along with license numbers. In the above circumstances, the authorities, having no other option, decided to impose the penalty.

5. Heard and considered rival submissions made by learned counsel appearing for both sides and perused the records.

6. The only reason adduced for imposing penalty is that, the petitioner failed to mention the file number or license number while submitting invoices before the authorities. Now, the learned counsel appearing for petitioner would submit that, though the petitioner had discharged their export obligation, due to oversight, the license number has not been mentioned in the invoices. Now, the petitioner is ready and willing to produce invoices along with license number and all other supporting documents to prove that the petitioner has fulfilled the export obligation.

7. Considering those submissions, in order to give an opportunity to the petitioner to prove that he had fulfilled the export obligation, the impugned order passed by the 3rd respondent is set aside and the matter is remanded back to the 3rd respondent. The petitioner is directed to produce all the relevant records including invoices with license number, with supporting documents to prove that he has fulfilled the export obligation within a period of four weeks from the date of receipt of copy of this order. On receipt of those materials, the 3rd respondent is directed to conduct a fresh enquiry and pass suitable orders on merits and in accordance with law after hearing the petitioner within a period of six weeks thereafter.



Accordingly, this Writ Petition stands allowed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Director General of Foreign Trade,
The Government of India,
Ministry of Commerce & Industry,
Udyog Bhavan,
New Delhi - 110 001.
2. The Additional Director General
of Foreign Trade,
The Government of India,
Ministry of Commerce & Industry,
Udyog Bhavan,
New Delhi - 110 001.
3. The Joint Director General
of Foreign Trade,
4th & 5th Floor,
Shastri Bhavan Annexe,
No.26, Haddows Road,
Chennai - 600 006.

+1cc to Mr.S.Murugappan, Advocate, S.R.No.11297

W.P.NO.3788 OF 2016

GPL(CO)
PBS/23/03/2022