



WEB COPY



WP.Nos.15470 and 32874 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.15470 & 32874 of 2019

and

W.M.P.Nos.15406 & 15408 of 2019

M/s.S.S.D.Oil Mills Company Limited
Represented by its Director
R.Deepan Dorai
No.52, 48th Street, Ashok Nagar,
Chennai – 600083.

... Petitioner in both the W.Ps

VS.

- 1.The Assistant Director General of Foreign Trade
26, Haddows Road, Shastri Bhavan Annexe,
Chennai – 600 006.
- 2.The Joint Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.
- 3.Additional Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.
- 4.Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.



WP.Nos.15470 and 32874 of 2019

5.Export Promotion Capital Goods (EPCG) Committee
Director General of Foreign Trade
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.

... Respondents in W.P.No.15470/19

The Zonal Additional Director of Foreign Trade
26, Haddows Road, Shastri Bhavan Annexe,
Chennai – 600 006.

... Respondent in W.P.No.32874/19

Prayer in W.P.No.15470 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 03.04.2019 issued by the 5th respondent in F.No.01/37/218/303/AM-18/EPCG-II/01 to the petitioner company, quash the same and further direct the 5th respondent to consider the export of alternate product for fulfillment of Export Obligation with respect of EPCG authorization No.0430000746 dated 12.09.2002.

Prayer in W.P.No.15470 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 03.10.2019 issued by the respondent in F.No.04/36/021/00156/AM03 to the petitioner company and quash the same.



WP.Nos.15470 and 32874 of 2019

WEB COPY

For Petitioner : Mr.Hari Radhakrishnan in both WPs

For Respondents : Mr.V.Chandrasekaran,
Senior Panel Counsel in both Wps

ORDER

The challenge in the writ petition in W.P.No.15470 of 2019 is to the rejection of the claim of the petitioner that it is entitled to the benefit of changed policy which was introduced from 28.01.2004, therefore it should be allowed to satisfy the minimum export requirement by including exports of substituted products. The petitioner was allowed to import a machinery with duty concession. While doing so, the petitioner was imposed an obligation to export a certain quantity of Vanaspati and Margarine. Admittedly, the petitioner could not meet the export requirement. It was able to export only 30% of the quantity required to be exported within the period. This authorization was granted to the petitioner on 12.09.2002. However, from 28.01.2004 there was a change in the policy and the Central Government decided to accept the export of alternative products as in satisfaction of the requirement of the original conditions.



WP.Nos.15470 and 32874 of 2019

2. The petitioner exported certain other products which are actually bye-products in the process of manufacturing Vanaspati and claimed that it has satisfied the Export Obligation. The EPCG Council by its order dated 03.04.2019 rejected the claim of the petitioner on the ground that since the petitioner's license was issued in the year 2002 and the policy to accept alternative products was introduced only in the year 2004, the petitioner would not be entitled to the benefit of new policy, which cannot be said to be retrospective.

3. Pending challenge to this order dated 03.04.2019, this Court passed an interim order on 05.09.2019 directing the petitioner to produce documents which would show the fulfillment of the Export Obligation before the Authorities and the Authorities were directed to consider the same and pass orders. Upon production of the documents, the request of the petitioner was again rejected reiterating the same reasons made in the order dated 03.04.2019 and adding certain other factual inputs by order dated 03.10.2019. The order dated 03.10.2019 is subject matter of challenge in W.P.No.32874 of 2019.



WP.Nos.15470 and 32874 of 2019

4. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner would vehemently contend that the Policy Relaxation Committee of the EPCG had taken a decision to accept export of alternative products to be granted for EPCG licenses issued even prior to 28.01.2004 in its meeting held on 23.09.2010. He would also point out that similar concession were given to other exporters by the Committee overturning the objections of the Departmental representative. Relying heavily upon the minutes of the meeting dated 23.09.2010, Mr.Hari Radhakrishnan would submit that having taken a conscious decision to allow alternative products in respect of licenses issued prior to 28.01.2004 also, the Committee cannot now go back on it and contend that the petitioner will not be entitled to such benefit.

5. A counter affidavit has been filed by the Deputy Director General of Foreign Trade on behalf of the respondents. In the counter affidavit it is claimed that the policy to allow alternative products will only be prospective and not retrospective. It is also added that the conduct of the petitioner lacks *bona fide* and therefore the petitioner cannot be given the indulgence.



WP.Nos.15470 and 32874 of 2019

WEB COPY

6. I am unable to subscribe to the contentions in the counter affidavit.

Once a policy decision is taken and the Committee passes a resolution to confer certain benefits on certain class of exporters such benefits should be made available to all exporters across the board without there being any distinction. A perusal of the minutes of the Committee dated 23.09.2010 would show that a conscious decision has been taken by the Committee to confer the benefit of substitution of products or inclusion of alternative products for fulfillment of Export Obligation on all exporters who are under Export Obligation irrespective of when the license was granted, if the license remains unredeemed. It is not in dispute that the license of the petitioner remains unredeemed and the petitioner has sought for substitution of the product.

7. I am not for a moment going into the question of whether in the substitution the petitioner has achieved 100% Export Obligation. The decision in this writ petition will be confined only to whether the petitioner can be allowed the benefit of substitution of the products pursuant to the



WP.Nos.15470 and 32874 of 2019

policy dated 28.01.2004, which in fact allows such substitution and if the petitioner is able to satisfy the Authorities that it has met the entire Export Obligation by taking into account the export of substituted products, the petitioner will have to succeed in its attempt to satisfy the Authorities that it has satisfied the Export Obligations. That mathematics is not within the purview of this Court at this juncture.

8. The decision in the writ petition is only on the policy decision of the Authorities. The only grievance of the petitioner is that it should be allowed to show export of alternative products to claim compliance with its Export Obligation. A perusal of the minutes dated 23.09.2010 and the proceedings of the EPCG Committee and the part of the written submission, wherein the petitioner has given instance of cases where licensees who were granted the license prior to 28.01.2004 were favoured with acceptance of alternative products would show that it is conscious decision of the EPCG Committee to accept export of alternative products in satisfaction of the Export Obligation, even in cases where licenses were issued prior to 28.01.2004.



WP.Nos.15470 and 32874 of 2019

9. The language of the minutes particularly the fact that the Council had taken note of the virtual reality that if change in the policy is made retrospective, the benefit would reach the exporters only after 8 to 10 years and that was not the intention of the Government would impel me to conclude that the respondents are not right in rejecting the request to accept the alternative products in discharge of petitioners Export Obligation.

10. In view of the above, the order impugned in W.P.No.15470 of 2019 is quashed. The petitioner would be entitled to avail the benefit of export of alternative products to show discharge of his Export Obligation. The consequential order which is subject matter of W.P.No.32874 of 2019 is also set aside and the order dated 03.10.2019 is treated as a show cause notice and the petitioner is permitted to give reply to the same and satisfy the Authorities that he has discharged 100% Export Obligation. The petitioner shall give reply to the order impugned in W.P.No.32874 of 2019 dated 03.10.2019 within a period of 30 days from the date of receipt of a copy of this order. If such reply is given, the Authority shall consider the same in the light of the observations made above and pass suitable orders. No costs. Consequently, the connected writ miscellaneous petitions are

8/10



WP.Nos.15470 and 32874 of 2019

closed.

WEB COPY

23.06.2022

dsa

Index: No

Internet: Yes

Speaking order

To

- 1.The Assistant Director General of Foreign Trade
26, Haddows Road, Shastri Bhavan Annexe,
Chennai – 600 006.
- 2.The Joint Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.
- 3.Additional Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.
- 4.Director General of Foreign Trade,
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.
- 5.Export Promotion Capital Goods (EPCG) Committee
Director General of Foreign Trade
Udyog Bhawan, H-wing, Gate No. - 02,
Maulana Azad Raod, New Delhi – 110 011.
- 6.The Zonal Additional Director of Foreign Trade
26, Haddows Road, Shastri Bhavan Annexe,
Chennai – 600 006.

9/10



WEB COPY



WP.Nos.15470 and 32874 of 2019

R.SUBRAMANIAN, J.

dsa

**W.P.Nos.15470 & 32874 of 2019
and
W.M.P.Nos.15406 & 15408 of 2019**

22.06.2022