IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14166 of 2020
and
W.M.P.No.17636 of 2020

M/s.Kottaiyur Engineering Company,
rep.by its Proprietor Mrs.B.Vasuki,
SP-136, South Avenue Road,
Chennai 58. ...Petitioner

Vs.

1. The Deputy Director General of Foreign Trade,
   Shastri Bhavan, Annexure 26,
   Hardows Road, 4th Floor,
   Chennai 06.

2. The Assistant Commissioner of Customs (EPCG)
   Customs House, Customs IV,
   No.60, Rajaji Salai,
   Chennai 600 001. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records of the 1st respondent proceedings in Ref.No.F.No.04/21/021/00117/AM08 dated 07.08.2020 quash the same being illegal invalid without Jurisdiction and violated the principles of natural justice and contrary to the law or issue such other writ direction as this Court think deem and fit proper in the circumstances of the case.

For Petitioner : Mr.D.Vijayakumar

For RR1 : Mr.K.Subburanga Bharathi
Central Government Standing Counsel

For RR2 : Mr.V.Sundareswaran

O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorari to call for records of the 1st respondent proceedings in Ref.No.F.No.04/21/021/00117/AM08 dated 07.08.2020 quash the same

2.The petitioner is running a small scale industries and carrying on the business of supplying all engineering components, auto components, machine tool components, aeronautic Components, valve leading customers and regularly filed their monthly returns and paid their taxes in accordance with law. The petitioner in furtherance to their business approached the 1st respondent office to import capital goods to manufacture automobile components and applied EPCG license under Foreign Trade Policy and was granted EPCG license, dated 28.05.2007 to import the capital goods. The petitioner was put on obligation to export automobile turned components manufacture out of the imported capital goods for 8 times of the duty saved amount. The petitioner imported the machines and was installed at the petitioner Factory premises and the same was duly certified by the Central Excise Authority. Due to cancellation of foreign buyer orders and worldwide recession in the year 2008, the petitioner unable to comply the export obligation. In such a circumstances the 2nd respondent issued a notice dated 01.08.2016 and directed the petitioner to pay the duty saved amount of Rs.5,80,739/- with interest and thereby, the petitioner appeared before the 2nd respondent and remitted the demanded amount of Rs.5,80,739/-vide demand draft dated 16.12.2016 and requested the 2nd respondent to waive the interest considering the bonafide difficulty faced by the petitioner. The 2nd respondent received the demand draft and informed that they will consider the waiver in due course. Inspite of the same, the 1st respondent issued a notice dated 14.06.2019 and directed the petitioner to produce documentary evidence to discharge the export obligation and also to appear for personal hearing on 26.06.2019. Though the representative of the petitioner gone to the 1st respondent office, he was unable to meet the officer and thereafter, the 1st respondent again issued a notice dated 05.02.2020 to appear for personal hearing on 02.03.2020 and on the said date, the consultant of the petitioner appeared before the 1st respondent office and explained the case, however the same was not considered in the impugned order and further due to COVID 19, the petitioner unable to represent before the 1st respondent Office and further due to continue lockdown, the entire factory was closed and hence the petitioner unable to reach out the 1st respondent office with relevant documents. It is alleged by the petitioner that the 1st respondent without providing sufficient opportunity, has passed the impugned order dated 07.08.2020, under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 by demanding penalty of Rs.15 lakhs. Challenging the said impugned order, the present petition is filed.

3.The learned counsel appearing for the petitioner submitted that admittedly the 2nd respondent issued notice dated 01.08.2016, directing the petitioner to pay the duty saved amount of Rs.5,80,739/- and in compliance of the said order, the petitioner paid the said amount by way of the Demand Draft to the 2nd respondent on 16.12.2016. However, the 1st respondent without appreciating any of these facts, has erroneously issued the show cause notice dated 07.08.2020 and cancelled the EPCG license dated 28.05.2007 on the ground that the petitioner failed to pay the duty saved amount and interest. However, the 1st respondent without considering the amount paid by the respondent on 16.12.2016 and subsequent payment of Rs.9,21,084/- vide interest TR6 chellan as interest, dated 07.09.2020, has passed the impugned order. Therefore, this Court may set aside the impugned order dated 07.08.2020 passed by the 1st respondent and remand the matter back to the authority and permit the petitioner to produce all the details before the 1st respondent to enable him to pass fresh orders, after considering the payment of duty saved amount along with interest.

4.The learned Central Government Standing Counsel submitted that though the 1st respondent given opportunity of personal hearing, he failed to produce the proof regarding payment of duty saved amount with the 1st respondent. In the absence of any proof, the request of the petitioner could not be considered and prays for dismissal of this petition.

5.This Court has carefully considered the rival submissions and also perused the materials placed on record.

6. The 1st respondent has passed the impugned order directed the petitioner to pay the penalty for failure in submitting the documents for the fulfillment of export obligation or applicable customs duty and interest in case of default in fulfilment of export obligation imposed against the said license. However it is the claim of the petitioner that in compliance of the notice dated 01.8.2016, the petitioner has paid the said amount by way of the Demand Draft to the 2nd respondent on 16.12.2016 and also paid Rs.9,21,084/-vide interest TR6 chellan as interest, on 07.09.2020 and further due to COVID 19 pandemic situation, the petitioner was unable to represented before the 1st respondent office and produce the relevant documents.

7. In view of the above, this Court considering the fact that the petitioner claims that he has the duty saved amount along with interest, is inclined to remit the matter back to the 1st respondent for fresh consideration. Accordingly, this Writ Petition is allowed and the impugned order passed by the 1st respondent dated 07.08.2020 is set aside and the matter is remitted back to the 1st respondent for fresh consideration to

enable the petitioner to produce relevant documents to prove his bonafide. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Director General of Foreign Trade,
   Shastri Bhavan, Annexure 26,
   Hardows Road, 4th Floor,
   Chennai 06.

2. The Assistant Commissioner of Customs (EPCG)
   Customs House, Customs IV,
   No.60, Rajaji Salai,
   Chennai 600 001.

+1cc to M/s.D.Vijayakumar, Advocate, S.R.No.1024

W.P.No.14166 of 2020

KSM(CO)
RGA(23/02/2022)