IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.29160 & 29163 of 2022 and
W.M.P.Nos.28443, 28445 & 28446 of 2022

M/s.Kamadhenu Wires,
Represented by its Partner
Mr.Karan Sankla
567, Thadagam Road,
Somayampalayam Post,
Coimbatore – 641 108. ... Petitioner in both WPs

Vs

1.The Deputy Director General of Foreign Trade,
1544, India Life Building (Annexe), I Floor,
Trichy Road, Coimbatore – 641 018

2.The District Collector,
Coimbatore.

3.The Tahsildar,
Coimbatore North Taluk. ... Respondents in both WPs

Prayer in WP.No.29160/2022**:** Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in the Order in Original (F.No.32/21/040/00162/AM14) dated 13.06.2017, quash the same.

Prayer in WP.No.29163/2022**:** Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent in Ref.No.12102/2022/D3 dated 20.06.2022, quash the same.

In both WPs

For Petitioner	:	Ms.Radhika Chandra Sekhar
For Respondents	:	Mr.R.Rajesh Vivekananthan Deputy Solicitor General for R1
	:	Mr.T.K.Saravanan Government Advocate for R2 & R3

COMMON ORDER

Since the issue raised in these writ petitions is one and the same and common, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The petitioner is an Exporter, therefore he availed certain benefits from the Director General of Foreign Trade under Foreign Trade Policy during export and import under which there was an export obligation on the part of the petitioner which the petitioner was accepted to complete within a time frame and then only there will be a discharge certificate of the export obligation be given by the Director General of Foreign Trade i.e. the 1st respondent for whom obligation should have been made to that effect within a time frame.

3. Despite these procedure in vogue, the petitioner even though claimed to have completed or fulfilled the export obligation sometime 2013 or 2014 has not acted upon for long years, therefore the 1st respondent initiated action against the petitioner by issuing a show cause notice as to why penalty cannot be imposed against the petitioner for not having fulfilled the export obligation.

4. Despite the show cause notice still the petitioner since has not responded the 1st respondent has proceeded to pass orders imposing the penalty against the petitioner by order dated 13.06.2017 followed by the recovery order that has also been issued by the 1st respondent. Challenging those orders only now the petitioner has moved the writ petition in W.P.No.29163 of 2022 even this was triggered because now pursuant to the imposing of penalty made by the 1st respondent, the District Collector concerned had issued a notice for recovery under the provisions of the Revenue Recovery Act (in short 'RR Act') on 20.06.2022.

5. Only after 20.06.2022 notice issued by the District Collector to recover the penalty imposed against the petitioner by the 1st respondent by way of recovery under RR Act, the petitioner has quickly acted upon and made a request on

27.07.2022 to the 1st respondent DGFT by filing documents like invoice copy, shipping bill etc. and seeks for issuance of discharge certificate from the 1st respondent and that request since is pending before the 1st respondent, the petitioner at this juncture has moved these two writ petitions first one is challenging the penalty imposed by the DGFT. Second one is the recovery proceedings under RR Act initiated by the Revenue Department i.e. the District Collector concerned.

6. Heard Ms.Radhika Chandra Sekhar, learned counsel appearing for the petitioner who would submit that, even though the export obligation was fulfilled long years back, the petitioner due to various reasons could not immediately act upon to collect those details and produce before the 1st respondent to get the discharge certificate, the delay caused on the part of the petitioner is due to various unforeseen reasons, any how the fulfilment of the obligation since has already been completed and in this regard relevant documents have also now been produced before the 1st respondent by communication dated 27.07.2022, let the 1st respondent consider those documents and issue a discharge certificate based on which all these proceedings issued against the petitioner can be revisited or rectified, she contended.

7. On the other hand, Mr.R.Rajesh Vivekananthan, learned Deputy Solicitor General appearing for the respondents i.e. DGFT would submit that, the export obligation should have been completed long years back but no proof had come and no communication had come from the petitioner. Therefore, after giving show cause notice, which was also since not responded by the petitioner, order of penalty was imposed in June 2017 even after five years nothing had happened, only now after receipt of the communication from the District Collector, who initiated proceedings under RR Act to recover the penalty amount, now it has been triggered the petitioner to approach the 1st respondent and file the obligation to get a discharge certificate only on 27.07.2022. Therefore, at this juncture the petitioner on that ground cannot successfully challenge the orders passed by the 1st respondent DGFT in the year 2017 and a consequential orders passed by the Collector for recovering the said amount, he contended.

8. Heard Mr.T.K.Saravanan, learned Government Advocate appearing for the State Authorities i.e. the Revenue Department/District Collector who passed/ initiated proceedings on 20.06.2022 against the petitioner for recovering from the petitioner under RR Act. He would submit that, since the order imposing penalty

was made by the 1st respondent i.e. DGFT, five years back it is the delayed action on the part of the Revenue Department to recover the money, therefore now the recovery proceedings have been initiated, under which, 20.06.2022 order was issued as a consequential proceedings. Unless and until the original proceedings of the DGFT imposing the penalty against the petitioner is cancelled, the petitioner has no legs to stand against the impugned communication issued by the District Collector dated 20.06.2022 under the RR Act, he contended.

9. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. It is the case where the petitioner claimed that the export obligation was completed or fulfilled within a time stipulated in this regard.

11. The only infirmity on the part of the petitioner is that, they have not immediately produced those bills and vouchers as well as the invoice copies etc. to the 1st respondent to get a discharge certificate.

12. When show cause notice was issued, it seems that, they have not responded, therefore the 1st respondent DGFT had no other option to pass orders imposing penalty after five years, only those orders have been challenged. Now this Court has to take a judicial notice that, the petitioner had fulfilled the obligation and in this regard in order to get a discharge certificate as a proof for fulfilling the obligation the documents like invoice, shipping bill had been produced before the 1st respondent on 27.07.2022. Therefore, this Court feels that the 1st respondent being the authority to consider those documents and to issue the discharge certificate, can consider and decide the same within a time frame that may be stipulated by this Court, till such time, the impugned orders can be kept in abeyance. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That there shall be a direction to the 1st respondent in W.P.No.29160 of 2022 i.e. Deputy Director General of Foreign Trade, Coimbatore to consider the representation or application submitted by the petitioner dated 27.07.2022 with regard to the plea of the petitioner to get the discharge certificate of the export obligation and pass orders thereon on merits and in accordance with law with regard to the grant of such certificate within a period of one month from the date of receipt of a copy of this order.

(ii) Till such time, the impugned orders passed by the 1st respondent in WP.No.29160 of 2022 and a consequential order passed by the 2nd respondent/ District Collector which is impugned in W.P.No.29163 of 2022 dated 20.06.2022 shall be kept in abeyance.

(iii) It is made clear that, depending upon the order to be passed by the 1st respondent on the application of the petitioner dated 27.07.2022, the further course of action on these impugned orders can be decided either way. Either it can be dropped or if the application of the petitioner is rejected, the further course of action can be decided accordingly by the 1st respondent.

13. With these directions, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

04.11.2022

Index : Yes / No

Speaking Order: Yes / No

Sgl

To

1. The Deputy Director General of Foreign Trade,
   1544, India Life Building (Annexe), I Floor,
   Trichy Road, Coimbatore – 641 018

2. The District Collector,
   Coimbatore.

3. The Tahsildar,
   Coimbatore North Taluk.

R. SURESH KUMAR, J.

Sgl

W.P.Nos.29160 & 29163 of 2022

04.11.2022