



WEB COPY



W.P.No.29927 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.29927 of 2019 and
WMP.No.29836 of 2019

IBC Limited
Vanguard House
No. 48, Second Line Beach
Chennai-1
Rep by its Director

...Petitioner

Vs.

- 1.The Director General of Foreign Trade
507, Udyog Bhavan,
Maulana Azad Road
New Delhi-110 011
- 2.The Chairman
EPCG Committee
O/o.The Director General of Foreign Trade
507, Udyog Bhavan,
Maulana Azad Road
New Delhi-110 011
- 3.Foreign Trade Development Officer
O/o.The Director General of Foreign Trade
507, Udyog Bhavan,
Maulana Azad Road
New Delhi-110 011
- 4.Dy.Director General of Foreign Trade
O/o.The Additional Joint Director
General of Foreign Trade
4th Floor, Shastri Bhavan
Annex 26, Haddows Road, Chennai-6

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records of the 3rd respondent in their proceedings leading to the passing of the order vide F. 01/ 36/ 218/ 162/ AM-18/ EPCG-1/ 332 dated 19.7.2019 quash the same and direct the 4th respondent to consider the documents filed by the petitioner and conclude the proceedings based on the Policy Circular No. 7/2002 dated 11th July 2002.

For Petitioner : Mr.S.Sathyannarayanan

For Respondents : Dr.G.Babu
Standing Counsel

ORDER

The petitioner challenges order dated 19.07.2019 passed by R3 /Foreign Trade Development Officer, conveying the decision of the competent authority upon the representations of the petitioner dated 08.06.2017 and 08.02.2019, seeking rectification of export as against EPCG Authorization No.0430001837 dated 26.08.2004 for the export of iron ore.

2. As against the aforesaid authorization, the petitioner has, admittedly, exported barytes powder. He has, in the representation filed before the respondents, adopted the argument that barytes powder belongs to the broad family of ‘mineral products’ and thus, export of the same in place of iron ore, for which it was granted authorization, must be condoned.

3. That apart, there has been no endorsement made upon the shipping bill at the time of export, which also, according to Dr.Babu, constitutes a



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violation of the procedure for export. He draws attention to the Handbook of Procedures, as per which, the EPCG license number and date must be endorsed upon the shipping bill, that is presented towards discharge of export obligation, at the time of export.

4. The rejection is on the ground that there is no provision for counting of a free shipping bill as fulfillment of export obligation under the EPCG Scheme. In this context, the petitioner relies on Policy Circular No.7 of 2002 dated 11.07.2002, that indicates that procedural lapses, such as non-endorsement of the shipping bills, may be condoned subject to verification of certain stipulated documents.

5. In the case of direct export, the documents to be verified are the following:

IN CASE OF DIRECT EXPORTS:

(I) An Affidavit/undertaking, duly certified by an independent CA, declaring that the exports account for fulfillment of EO against a particular EPCG licence have not been/shall not be taken into account for fulfillment of EO against any other EPCG licence.

(II) List of EPCG licences obtained by the licence holder.

(III) The product exported under the shipping bill was manufactured by using the imported machinery under EPCG.

6. According to the learned counsel for the petitioner, all required annexures as above had been submitted before the authorities under cover of



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letter dated 03.12.2012 and in response to whether the letter and annexures were produced before the authorities, he draws attention to what he states is a receipt of acknowledgement for letter dated 03.12.2012. However, this acknowledgment, at page 116 of the typed set dated 27.09.2019, refers to letter dated 05.12.2012, and therefore, runs counter to his statement.

7. That apart, the petitioner has, admittedly, received, a show cause notice on 02.07.2019 pointing out the lapses in the procedure followed by the petitioner and calling for his response. According to both learned counsel, the show cause notice has not been proceeded with as the officials await disposal of this writ petition.

8. I am of the considered view that the petitioner must appear before the authority and must make its case as regards the violations that have been alleged. Admittedly, there is a violation both in terms of the commodity exported as well as the absence of endorsement upon the shipping bill, contrary to the proper procedure stipulated.

9. It is for the concerned authority to decide, upon hearing the petitioner and upon examination of documents, if any, that it may produce, as to whether the petitioner is entitled to the benefit under Policy Circular No.7 of 2002. The petitioner will appear before the Deputy Director General



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of Foreign Trade i.e. R4 on Wednesday, the 2nd of November, 2022 along with a reply and supporting material, if any.

10. After hearing the petitioner and considering evidences, if any, filed by the petitioner, an order shall be passed by R4 within a period of four weeks i.e. on or before 05.12.2022. This writ petition is dismissed, though with liberty, as aforesaid. No costs. Connected miscellaneous petition is closed.

17.10.2022

Index : Yes/No

Speaking Order

ska

Note: Issue order copy of 03.11.2022.

To

1.The Director General of Foreign Trade
507, Udyog Bhavan,
Maulana Azad Road
New Delhi-110 011

2.The Chairman
EPCG Committee
O/o.The Director General of Foreign Trade
507, Udyog Bhavan,
Maulana Azad Road
New Delhi-110 011



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DR.ANITA SUMANTH,J.

3.Foreign Trade Development Officer
O/o.The Director General of Foreign Trade
507, Udyog Bhavan,
Maulana Azad Road
New Delhi-110 011

4.Dy.Director General of Foreign Trade
O/o.The Additional Joint Director
General of Foreign Trade
4th Floor, Shastri Bhavan
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