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W.P.No.33620 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.33620 of 2022
and
W.M.P.No.33077 of 2022
in
W.P.No. 33620 of 2022

M/s.Sameta Metal Pro Private Limited
DP-41, 2nd Main Road, Sidco Industrial Estate,
Thirumudivakkam, Chennai – 600 044.
Rep by its Director Mr.Velayudham.

... Petitioner

-Vs.-

1.Deputy Commissioner of Customs (EODC-EPCG)
Office of Commissioner of Customs
Chennai – II (Import), Custom House,
No.60, Rajaji Salai, Chennai – 600 001.

2.Additional Director General of Foreign Trade
4th Floor, Shastri Bhavan Annexe
26, Haddows Road, Chennai – 600 006.

3.The Branch Manager
State Bank of India
AME – Thirumudivakkam Branch
CMP No.1, SIDCO Industrial Estate
Thirumudivakkam, Chennai – 600 132.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records relating to the impugned order bearing reference F.No.S45/1178/2010-EPCG dated 02.12.2022 passed by the first respondent and quash the same.

For Petitioner : Mr.T.R.Ramesh

For Respondents : Mr.M.Santhanaraman,
Sr.Standing Counsel (Customs), for R1

Mr.M.Karthikeyan,
Sr.Panel Counsel (DGFT), for R2

Mr.S.Rajesh, for R3

ORDER

This order will now dispose of the captioned main Writ Petition and captioned Writ Miscellaneous Petition ['WMP' for the sake of brevity].

2.This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 14.12.2022 which reads as follows:



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M.SUNDAR, J

Captioned writ petition pertains to import of capital goods by writ petitioner by availing duty concession under what is known as 'EPCG' scheme ['EPCG' stands for 'Export Promotion Capital Goods']. The licensing period elapsed on 04.05.2018 but the importer did not meet the export obligation and produce 'EODC' ['Export Obligation Discharge Certificates'] qua discharge of exemption license. It is also alleged that the importer has not complied with Notification No.102/2009-Cus dated 11.09.2009.

2. Mr.T.R.Ramesh, learned counsel for writ petitioner submits that time has been extended for meeting export obligation but a 'notice dated 02.12.2022 bearing reference F.No.S45/1178/2010-EPCG' [hereinafter 'impugned notice' for the sake of convenience and clarity] has been issued by the first respondent for invoking a Bank Guarantee for a sum of Rs.50,41,000/- and the issuing Bank is the third respondent.



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4. Mr.M.Santhanaraman, learned counsel accepts notice for first respondent and requests for a short accommodation to get instructions and revert to this Court. Notice to respondents 2 and 3 returnable in one week i.e., returnable by 21.12.2022. Learned counsel for writ petitioner is permitted to serve on learned standing counsel for second respondent as well as third respondent.

5. As learned Revenue counsel, who has accepted notice for first respondent (to be noted impugned notice has been issued by first respondent) seeks time to get instructions and revert to this Court, the aforementioned impugned notice will be kept in abeyance till the next listing. To be noted, this Court is informed by both sides that Bank has not released the payment as of today/as of now pursuant to the impugned notice.

6. Registry to show the name of learned Revenue counsel in the next listing. List in the Admission Board on 21.12.2022.

14.12.2022
(2/2)

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Note to Office : Upload forthwith.

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3.To be noted, the short forms, abbreviations and other short references used in the earlier proceedings dated 14.12.2022 will continue to be used in the instant order also for the sake of convenience and clarity.

4.Adverting to earlier order, Mr.T.R.Ramesh, learned counsel for Writ Petitioner submits that the second respondent has since extended the time for export obligation upto 15.12.2023 vide proceedings dated 20.12.2022 and a scanned reproduction of the same is as follows:



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Government of India : भारत सरकार

Ministry of Commerce and Industry / वाणिज्य और उद्योग मंत्रालय

Department of Commerce / वाणिज्य विभाग

Directorate General of Foreign Trade / विदेश व्यापार महानिदेशालय

Office of the Additional Director General of Foreign Trade, Chennai : अवर महानिदेशक, विदेश व्यापार वर कार्यालय, चेन्नई

4th Floor, Shastri Bhawan Annex, 26, Haddows Road, CHENNAI / चौथी मंजिल, शस्त्री भवन एन्नेक्सी, 26, हड्डोव रोड,

चेन्नई, चेन्नई, तमिलनाडु, 600006

Email Office : chennai-dgft@nic.in Phone Office : 044-28283404/08

LICENCE AMENDMENT SHEET

Amendment Sheet No : 1

Attached to Licence No : 0430008491

File No : 04EHEPC00965AM23

Date : (Refer Date of Digital Signature)

Issued By : Office of the Additional Director General of Foreign Trade, Chennai

Issued To :

SAMEETA METAL PRO PRIVATE LIMITED,
DP 41 2ND MAIN ROAD,
SIDCO INDUSTRIAL ESTATE THIRUMUDIVAKKAM,
CHENNAI
600044

Export Obligation Period has been extended up to 15.12.2023 as approved by EPCG Committee in its 7th Meeting of 2023 held on 14.10.2022 and 17.10.2022.

From Date: 04/05/2016 To Date: 15/12/2023

Original File Number: 042102100081AM11 Authorisation date: 04/05/2016

(Issued from File Number: 04EHEPC00965AM23 dated 20/12/2022)

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.



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5.As the time for meeting the export obligation has now been extended upto 15.12.2023 by the second respondent, the impugned order issued by the first respondent qua invocation of Bank Guarantee will stand set aside subject to the condition that the Writ Petitioner keeps the Bank Guarantee alive till the EODC qua discharge of exemption license is produced. To be noted EODC qua the license granted to the Writ Petitioner is the subject matter of the captioned Writ Petition.

6.It is also to be noted, Mr.S.Rajesh, learned counsel who is before this Court submits that he represents the third respondent Bank. Irrespective of whether learned counsel files Vakalatnama, the third respondent Bank will remain bound by this order. The Writ Petitioner shall keep the Bank Guarantee alive till the production of EODC.

7.Captioned Writ Petition disposed of with the above observations. Consequently, captioned WMP is closed. There shall be no order as to costs.

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Index: yes/no
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To
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1. Deputy Commissioner of Customs (EODC-EPCG)
Office of Commissioner of Customs
Chennai – II (Import), Custom House,
No.60, Rajaji Salai, Chennai – 600 001.

2. Additional Director General of Foreign Trade
4th Floor, Shastri Bhavan Annexe
26, Haddows Road, Chennai – 600 006.



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