BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.22701 of 2018

and WMP(MD)No.20593 of 2018

M/s.Everest Minerals
No.157, Kamarajar Salai,
Near Teppakulam,
Madurai- 625 009
Tamil Nadu.
Rep. by its Managing Director
S.Nagarajan .. Petitioner

Vs

1.The Secretary, Government of India,
Ministry of Commerce and Industry
(Department of Commerce)
Directorate General of Foreign Trade,
No.507, Udyog Bhawan, Maulana Azad Road,
New Delhi- 110101.

2. The Secretary
Department of Revenue,
Ministry of Finance
North Block
New Delhi- 110 101.

3.Foreign Trade Development Officer
The Director General of Foreign Trade,
Maulana Azad Road
Udyog Bhavan,
New Delhi 110 101.

4. The Joint Director General of Foreign Trade,
117, 1st Main road,
K.K.Nagar, Madurai.
Tamil Nadu 625 020 .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records culminating to the issuance of the impugned order No.01/37/218/180/AM-17/EPCG-I dated 22.09.2017 by the respondent no.3 and declare the provisions of para 5.14 (2009-14) and para 5.23 (2015-20) of FTP and HBP as unsustainable, ultra virus, illegal in law and quash the same and direct the respondents to refund the amount of custom duty collected from the petitioner arbitrarily.

For Petitioner : No appearance
For Respondents : Mr. N. Nandagopal
Standing Counsel

ORDER

The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, calling for the records culminating to the issuance of the impugned order No.01/37/218/180/AM-17/EPCG-I, dated 22.09.2017, by the respondent No.3 and declare the provisions of para 5.14 (2009-14) and para 5.23 (2015-20) of FTP and HBP and quash the same and further direct the respondents to refund the amount of custom duty collected from the petitioner arbitrarily.

3. Though the matter listed under the caption 'for dismissal' today, there is no representation for the petitioner. Heard the learned counsel appearing for the respondent. This Court after perusing the affidavit filed by the petitioner, has passed this order.

4. The contention of the petitioner is that the petitioner is engaged in the business of manufacturing and processing of granite blocks from the mines. The granite bolcks are excavated by using earth moving equipments. As per the export promotion schemes, to encourage exports, the exporters can file an application to the Export Promotion Capital Goods Scheme (herein after called as EPCG) Authorization (License) for import of capital goods at 3 % concessional rate of custom duty on condition that the authorization holder shall export goods worth 8 times of the duty exempted in the import of capital goods within a period of eight years in two block periods of four years each. In this case, the petitioner had availed exemption of Rs.22,49,637/- and corresponding export obligation @ 8 times of this amount works out to Rs.1,79,97,096/-. In case of failure to fulfill the export obligation within the stipulated period of eight years, the authorization holder will have to pay back the total amount of custom duty availed along with the applicable interest as per the notification. The petitioner received letter dated 29.03.2017, calling upon him to pay the full custom duty notionally allowed to import of Capital Goods permitted in the above said EPCG Authorisation. The petitioner had not imported any goods from abroad and therefore, the payment of customs duty does not arise. The petitioner had procured the goods locally and incurred only the Central Excise Portion of the duties. The petitioner sent an E-mail, dated 18.05.2017, to the second respondent for necessary approval. The second respondent rejected the request of the petitioner and directed the petitioner to pay notional customs duty. Hence, the order of the second respondent demanding payment of customs duty has to be setside. The fourth respondent has issued an order dated 06.10.2010 in the form of amendment to the main condition of the

EPCG authorization dated 25.07.2008, thereby permitting the petitioner to procure the goods locally. Based on this order, goods were procured from the local supplier M/s.Atlas Capco(I) Ltd., Pune, wherein the Central Excise Duty exemption availed by the petitioner works to Rs.3,21,875/- only. Similarly the fourth respondent issued another order dated 07.09.2010, where the petitioner had availed a total exemption of Central Excise Duty exemption of Rs.10,73,775/- under two authorization exemption on the specific order of the fourth respondent. The third respondent had forcefully collected the additional customs duty even though no incidence of customs duty has suffered in the utilization of the subject EPCG authorization in the procurement of goods permitted therein. The petitioner's actual incidence of Central Excise duty plus interest exemption availed by the petitioner in both the EPCG Authorisations works out to Rs.19,74,612/-. This amount has been paid and settled by the petitioner to compensate the exemption so availed under the Central excise Act,1944. The third respondent also forcibly collected the Notional Customs Duty for a total value of Rs.28,24,946/- on the assumption that the petitioner had imported the goods from abroad. The petitioner had lawfully settled the entire Central Excise Duty with applicable interest and there is no revenue loss, hence the additional duty of non exempted customs duty under the Customs Act is not fair and justificable, hence, he has filed the present petition.

5. The learned counsel appearing for the respondent filed a counter stating that the petitioner claiming that he has paid the exempted custom duty and the cental excise duty is not correct. The petitioner had paid notional custom as could be seen as under:
Authorization No.3530003351 dated 25.07.2008

Notional Customs duty as per Authorization	Rs.7,24,302(payable) + interest
Initially Central Excise duty + interest paid by the petitioner	Rs.3,21,875(duty) Rs.2,68,314(interest)
Balance(i.e. Notional Customs duty minus already paid Central Excise duty) paid by the Petitioner :	Rs.4,02,427(balance duty) Rs.5,59,484 (interest for this balance duty)

For Authorization No.3530004143 dated 11.8.2010

Notional Customs duty as per Authorization	Rs.15,25,335 (payable) + interest
Initially Central Excise duty + interest paid by the petitioner	Rs.7,51,900(duty) Rs.6,32,523 (interest)

Balance(i.e. Notional Customs duty minus already paid Central Excise duty) paid by the Petitioner	Rs.7,73,435(balance duty) Rs.10,89,600 (interest for this balance duty)

6.The Bank guarantee executed by the firm was returned by the respondents since they were not enforced by the respondents. Hence, it is evident from the above that the respondent had collected notinal customs duty only. The petitioner without following the policy and procedure is making a claim that that the local procurement is against EPCG authorization is withour proper understanding. In this case, following the trade policy, exemptions are to be given with certain conditions. The petitioner having failed to comply with the conditions and paying the duty later now claiming that he had been forced to pay both customs and excise duty is not proper and prayed that the petition may be dismissed.

7. It is seen that the petitioner had availed the benefit of customs and central exercise duty for the reason that EPCG is giving undertaking to export and the petitioner had filed application for EPCG authorization (License) for import of capital goods concerned and thereafter received authorization from the fourth respondent for availing the benefit of customs duty and thereafter it was found that the petitioner had fulfilled obligation and in terms of para 5.7 of FTP(2009-14)read with para 5.08 of FTP (2015-2020) and 5.14 of HBP(2009-14) read with para 5.23 of HBP (2015-2020) the export obligation in the case and domestic sourcing is reckoned with the notional custom duty for FOR value. Therefore, the petitioner was asked to pay the duty and he had also paid the notional custom duty only. The petitioner is directed to approach the revenue authorities for requisition for application along with the requisite dcouments, satisfy the authorities and to avail the benefits, if it is available.

8. In view of the same, the Writ Petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

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