IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.432 of 2020
and
W.M.P.No.489 of 2020

M/s. Tamil Nadu Trade Promotion Organisation
(known as Chennai Trade Centre),
Rep. by its Managing Director, Tmt.Subbulaxmi,
Nandambakkam, Chennai-600 089. ...Petitioner

Vs.

The Deputy Director General of Foreign Trade,
Office of the Additional DGFT,
Shastri Bhawan, Haddows Road,
Chennai – 600 006. ...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the Order in Original F.No.04/21/021/236/05 dated 14.11.2019 passed by the respondent and to quash the same as violative of principles of natural justice, arbitrary and unsustainable.

For Petitioner : Mr.K.Jeyachandran

For Respondent : Mr.AR.L.Sundaresan, ASG,
Assisted by Mr.Venkataswamy Babu, SPC GOI

O R D E R

This Writ petition has been filed seeking quashment of the proceedings of the respondent in respect of the order in Original F.No.04/21 /021/236/05 dated 14.11.2019.

2. The case of the petitioner is that, the petitioner/company is a Joint Venture Company, set up jointly by India Trade Promotion Organisation and Tamil Nadu Industrial Development Corporation and was formed as per "Foreign Trade Policy Decision" of Government of India under Market Access Initiative Scheme, set up with the support of Ministry of Commerce and Industry and Ministry of External Affairs, Government of India. The petitioner company had set up "Chennai Trade Centre", an exhibition complex in Nandambakkam, hosting several trade fairs and conventions round the year. The petitioner company obtained EPCG licence from the respondent office for import of capital goods, with certain conditions. The petitioner/company arranged and conducted exhibitions for foreign corporates and also meetings of foreign delegates in the convention centre and earned substantial foreign exchange in furtherance of the fulfilment of obligation imposed while importing the capital goods. As per the condition

of the licence, the petitioner has to file declaration before the respondent about the details of fulfiment of export obligations through Foreign Exchange earnings and request for discharge of the bond, however, due to inadvertence and passage of time, the petitioner failed to file the requisite declaration before the respondent. Therefore, the respondent issued a show cause notice dated 10.05.2019 for non-fulfilment of the Export Obligation documents and for regularization of EPCG Authorization. However, the said show cause notice was not served on the petitioner and the same was sent in the name of some of the nominated Directors. While such being the case, an *ex-parte* order was passed by the respondent in F.No.04/21/021/239/05 dated 14.11.2019, imposing a penalty of Rs.5,00,000/- on the petitioner under Section 13 of the FTDR Act, without affording opportunity of personal hearing to the petitioner. Challenging the same, the present Writ Petition is filed.

3. Though very many grounds have been raised in the writ petition, however, the major grievance of the petitioner is that, the respondent has passed the present impugned order imposing a penalty of Rs.5,00,000/-, without providing an opportunity of personal hearing to the petitioner

company, which is not sustainable and on the sole ground, the present impugned order is liable to be set aside. Hence, he submitted that, it would suffice, if this Court, remands the matter to the 1st respondent for fresh consideration and passing appropriate orders.

4. Learned Additional Solicitor General appearing for the respondents submitted that, EPCG Authorization was granted for exporting capital goods. However, in the present case, the petitioner is running a Trade centre for exhibiting foreign goods and practically no goods were exported from India to foreign countries by the petitioner company so far for earning foreign currency. Therefore, in the absence of any export, there arise no question of extending EPCG scheme/licence/Authorization in favour of the petitioner company.

5. Heard learned counsel on either side and perused the materials available on record.

6. The very many grounds have been raised, however, the major grievance of the petitioner is that no opportunity was granted prior to the passing of the impugned order. Though such a stand is taken by the petitioner, the same in no way is controverted by the respondents by

producing any documents to vindicate their stand. Such being the undisputed position, necessarily there is gross violation of principles of natural justice, which warrants interference with the impugned order.

7. Hence, on the sole ground, this Court is inclined to interfere with the order impugned in this Writ petition. Accordingly, the order of the respondent dated 14.11.2019 impugned in this Writ petition is set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to conduct enquiry by fixing up a date and intimating the petitioner and the petitioner is directed to appear before the respondent on the same date, on which date, the respondent shall enquire the matter by affording an opportunity of personal hearing to the petitioner and also to produce documents and pass appropriate orders within a period of two weeks thereafter. Liberty is granted to the petitioner company to produce all necessary documents before the respondent on the date of the enquiry to substantiate its contentions.

8. With the above observations and directions, this Writ Petition

stands allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

06.04.2023

skt

NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

The Deputy Director General of Foreign Trade,
Office of the Additional DGFT,
Shastri Bhawan, Haddows Road,
Chennai – 600 006.

M.DHANDAPANI., J.

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