IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2023

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13281 of 2016 and
W.M.P.No.11656 of 2016

M/s. Tatia Intimate Exports Ltd.
No.81-B, 2nd Main Road, Ambattur
Industrial Estate, Chennai – 600 058.
(Now known as Tatia Global Venture Limited)
Rep. by its Director
Shri Bharat Jain Tatia .. Petitioner

vs

1. The Director General
Directorate General of Foreign Trade
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhavan, New Delhi – 110 001.

2. The Foreign Trade Development Officer
O/o The Director General of Foreign Trade
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhavan, New Delhi – 110 001.

3. The Foreign Trade Development Officer
O/o The Zonal Joint Director General of Foreign Trade
Ministry of Commerce & Industry
Department of Commerce, Shastri Bhavan Annex
4th & 5th Floor, No.26, Haddows Road
Chennai – 600 006. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, calling for the records in and connected with F.No.20/418/AM95 EPCG-I/144 dated 14.12.2015 passed by the first respondent, quash the same and forbear the respondents from taking any coercive action against the petitioner entity under the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and for such other orders.

For the Petitioner	:	Mr.B.Satish Sundar
For the Respondents	:	Mr.K.Srinivasa Murthy Additional Central Government Standing Counsel for respondents 1 to 3

ORDER

The order impugned dated 14.12.2015 passed by the Director General of Foreign Trade is sought to be quashed in the present writ petition.

2. On 25.11.1994, the petitioner was issued with EPCG license for import of machineries and capital goods for its export unit. The CIF value with regard to import is made in USD 5,30,800.12. The export obligation to be fulfilled is USD 18,75,383 within five years from the date of utilization of

the license. The actual utilization of the license for import cost is USD 4,68,845.67. The petitioner sought for extension of time on 25.10.1999 for fulfillment of export obligation. The petitioner reiterated its request on 27.09.2000 for fulfillment of export obligation. Since there was no response, once again the petitioner sought for an extension of time for fulfillment of the export obligation on 15.10.2001. On 11.07.2022, the DGFT issued a policy circular in 7/2002, stipulating certain conditions in case of third party exports, which are:

(i) No Objection Certificate from the 3rd party(s) for accepting the subject exports for fulfillment of EO against the EPCG license obtained by the license holder.

(ii) An affidavit / undertaking in a stamp paper, duly certified by an independent CA, declaring that neither the license holder nor the 3rd party(s) has counted / shall count in future, the exports shown against a particular EPCG license towards fulfillment of EO against any other EPCG license.

(iii) List of EPCG licenses obtained by the license hlder as well as by the 3rd party(s).

(iv) A declaration from the 3rd party(s) in a stamp paper, duly certified by an independent CA, declaring that the products exported for fulfillment of EO by them on behalf of the license holder as per details given in the statement of exports, were manufactured by the license holder.

(v) This would be subject the condition that the relevant shipping bills contain both the names of the 3rd party(s) and the license holder.

3. On 10.05.2006, a demand notice was issued to the writ petitioner by the second respondent, directing the petitioner to pay customs duty forgone proportionately with respect to the utilisation of the license on account of non-fulfillment of export obligation. The petitioner responded on 23.05.2006 stating that the export obligation to the tune of USD 6,36,025

had been fulfilled and further time is required for fulfillment of its export obligation.

4. However, the petitioner and its Directors were declared as defaulters in proceedings dated 22.06.2006 by the second respondent. The petitioner had stated that they have completed a part of the export obligation by themselves by making exports to the tune of USD 6,44,925.40 and had exported ready-made garments, including third party exports for the period 01.04.2005 to 30.06.2006 to the tune of USD 22,29,328.15. Further representation is made to the respondents by the petitioner. The petitioner filed an addendum letter to the second respondent on 30.08.2006 directing the petitioner to approach the Grievance Redressal Committee of the Department of Commerce for considering its claims. Accordingly, the petitioner approached the Grievance Redressal Committee. The petitioner made further request on 20.10.2006. The Grievance Redressal Committee fixed date for hearing on 28.03.2007.

5. The petitioner made a detailed representation to the Grievance Redressal Committee. The Committee, advised the petitioner to discuss with the concerned officer of the DGRT, as to the applicability of the notification of DGRT circular for the consideration of the case of the petitioner for counting the 3rd party exports even when shipping bills of 3rd party do not bear the EPCG licence number and date. A detailed notice was subsequently issued once again to the petitioner.

6. Finally, the petitioner filed W.P.No.34201 of 2007, challenging the decision taken in proceedings dated 03.10.2007 by the second respondent, informing the petitioner that the 3rd party exports do not fall within the scope of policy circular 7/2002 and requested to consider the case of the petitioner for exemption to comply with the export obligation. W.P.No.34201 of 2007 was allowed on 03.04.2009 set asiding the order impugned and the matter was remitted back to the authorities for reconsideration afresh. On 21.08.2009, the third respondent passed an *ex parte* order rejecting the case of the petitioner.

7. Challenging the said order, again the petitioner filed W.P.No.26769 of 2009. The said writ petition was disposed of by this Court on 27.03.2014 and the impugned order dated 28.08.2009 was quashed and again the matter was remitted back to the authorities for fresh consideration. Pursuant to the orders of the High Court, the petitioner made further application to the office of the first respondent for reconsideration of the case of the petitioner. On 10.02.2015, the petitioner was directed by the authorities to submit copies of the shipping bills. The petitioner responded to the above request and submitted full set of documents. However, without considering the request of the petitioner, the claim was rejected through the impugned order dated 14.12.2015.

8. The learned counsel for the petitioner mainly contended that the circular No.7/2002 is applicable to the case of the petitioner and the petitioner has already submitted all the relevant documents and thus, there is no reason, whatsoever, to reject the claim of the petitioner based on the said

circular No.7/2002. The respondents rejected the case on the ground that the petitioner failed to comply with the clause (v), stipulated in the policy scheme No.7/2002 dated 11.07.2002. In respect of the said clause (v), the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Mangalore Chemicals & Fertilizers Ltd. Vs Deputy Commissioner*** reported in ***[1991 (55) E.L.T. 437 (SC)]*** wherein, the Apex Court made the following observations:

> *"12. Shri Narasimhamurthy again relied on certain observations in Collector of Central Excise, Bombay-1 & Anr. v. M/s. Parle Exports (P) Ltd., [1989] 1 SCC 345 in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax-payers and should be construed against the subject in case of ambiguity. It is an equally well-known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of M/s. Parle Exports (P) Ltd. relied upon by Sri Narasimhamurthy, it was observed:*
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> *"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."*

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India & Ors. v. M/s. Wood Papers Ltd. & Ors., [1991]JT(1) 151at 155.

" ...... Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject jails in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction .... "

(Emphasis supplied)"

9. In ***M/s.YSI Automotive India Pvt. Ltd., vs Commissioner of Customs*** in ***W.P.Nos.3591 of 2019 and 9046 of 2020***, the learned Single Judge of this Court has observed that;

"5. The legal issue to be answered would be whether the mention of the EPCG license number on the shipping bill was mandatory or whether the petitioner could seek to explain, by virtue of other contemporaneous and supporting evidences, the factum of export. This could be done by the petitioner by any number of methods, including confirmations from Glovis, correspondences and other documents at its disposal, among others. No doubt, it is for the petitioner to establish that its exports through Glovis have, in fact, taken place. However, such opportunity does not appear to have been extended to the petitioner and the first respondent has merely rejected the claim not adverting to this aspect of the matter at all."

10. Relying on the above judgments, the learned counsel for the petitioner reiterated that the petitioner could able to explain and establish his case through the supporting documents, wherein, all required details are made available. That being the factum, the exemption is to be granted in accordance with the policy circular No.7/2002 dated 11.07.2002. The rejection order and the reasons stated are untenable, since it is running counter to the principles laid down by the Courts, that the supporting

documents would be sufficient enough to grant exemption by invoking the policy circular No.7/2002.

11. The learned Central Government Standing Counsel appearing on behalf of the respondents, strenuously objected the said contention by stating that, no doubt, the conditions are to be fulfilled, which is not disputed even by the petitioner. The five conditions are stipulated in the policy circular No.7/2002. It is not in dispute between the parties that the first four conditions were fulfilled by the petitioner and the fifth condition alone has not been fulfilled. In the present case, even through the supporting documents, the petitioner failed to establish his case and thus, the authorities have rejected the case of the petitioner for grant of exemption and thus, there is no infirmity as such and consequently, the writ petition is to be rejected.

12. Let us consider clause (v) of the policy scheme No.7/2002, which reads as “this would be subject to the condition that the relevant shipping bills contain both the names of the 3rd party(s) and the license holder”.

Therefore, the exemption is subject to the condition that the relevant shipping bills containing both the names of the 3rd party and the license holder must be produced. The findings of the authority in the impugned order with reference to condition (v) is that " condition (v) of policy circular No.7/2002 dated 11.07.2002 clearly states that, condonation of procedural lapse of not mentioning EPCG license number and date on third party shipping bills relating to the exports for fulfilment of EO under EPCG scheme may be allowed, subject to the condition that the relevant shipping bills contain both the names of the 3rd party(s) and the license holder. It is evident that in order to relax the condition of mentioning the EPCG license number and date of license, the name of EPCG license holder must be endorsed on the shipping bill. The petitioner has repeatedly failed to produce copies of the shipping bills relating to 3rd party exports made by them in order to ascertain whether this condition has been fulfilled by him."

13. The findings are to be read with reference to the conditions imposed in the policy scheme. The conditions imposed in the policy scheme

is unambiguous that the relevant shipping bills should contain both the names of the 3rd party and the license holder. The findings of the competent authority reveals that in order to relax the conditions, EPCG license number, date of the license and the name of the EPCG license holder should be endorsed in the shipping bills. However, the authority found that the petitioner repeatedly failed to file the copies of the shipping bills relating to the 3rd party exports made by them. In order to ascertain whether the condition has been fulfilled or not, ample opportunities were provided to the petitioner to ship his goods with reference to the name of the EPCG license holder, which must be endorsed on the shipping bill. In respect of the opportunity granted, the petitioner could not establish the same through documents and thus, the authorities had no option but to reject the claim of the writ petitioner to grant of exemption.

14. It is not as if the authorities have not considered the case of the writ petitioner, the authorities have gone into the documents filed by the petitioner and admitted to call out an opportunity in order to comply with

clause (v) of the police scheme. Since, the requisite particulars are not available in the documents produced by the petitioner, they were not able to consider the case of the petitioner for grant of exemption positively. This being the factum, the case of the petitioner is to be considered only if the shipping bills contain these particulars and are produced before the authorities along with the application and not otherwise.

15. This being the factum established, this Court do not find any infirmity in respect of the order passed by the respondents and accordingly, the writ petition stands dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Index : Yes/No 10.03.2023
Neutral Order:Yes/No
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   Udyog Bhavan, New Delhi – 110 001.

2. The Foreign Trade Development Officer
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S.M.SUBRAMANIAM,J.

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