IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.2535 of 2020
and
W.M.P.No.2948 of 2020

1. M/s.Dwaraka Engineerings,
represented by its Partner Mr.R.Damodaran,
74, NP SIDCO Industrial Estate, Ambattur,
Chennai,
Tamil Nadu – 600 098.

2. R.Damodaran,
C/o.P.Ramadoss,
140/12, Kailash Colony,
Anna Nagar West Extension,
Chennai,
Tamil Nadu – 600 101.

3. T.Sree Jayanthi,
C/o.Thiruppathiraman,
173-NP SIDCO Industrial Estate,
Ambattur,
Chennai,
Tamil Nadu – 600 098. ... Petitioners

Vs

1. Joint Commissioner of Customs EPCG,
   Chennai-IV Commissionerate,
   5th Floor, Room No.G512, Ganga Block,
   Custom House, Rajaji Salai,
   Chennai – 600 001.
2. Assistant Commissioner of Customs EPCG,
   Office of the Commissioner of Customs,
   Custom House, No.60 Rajaji Salai,
   Chennai – 600 001.

3. Foreign Trade Development Officer,
   Office of Joint Director General of Foreign Trade,
   38-39, Whites Road,
   Chennai – 600 014. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in respect of the Show Cause Notice issued to the Petitioners on 28.12.2019, bearing file reference number S45/815/2004-EPCG (Sea) and quash the same.

For Petitioners : Mr.O.L.R.Ganesan

For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel
Mr.R.P.Pragadish
Central Government Counsel

ORDER

Heard the learned counsel appearing for the petitioners and the learned Senior Standing Counsel appearing on behalf of the first and second respondents and the learned Central Government Counsel for the third respondent.

2. The petitioners have challenged the impugned Show Cause Notice dated 28.12.2019 issued by the respondent demanding duty foregone by the petitioner at the time of import of capital goods under Bill of Entry No.673488 dated 24.08.2004 and to confiscate the aforesaid capital goods under Section 111(0) of the Customs Act 1962, for violating the conditions of Exemption Notification No.55/03 dated 01.04.2003 and for interest and for further penalty under Section 112(a) of the Customs Act, 1962.

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3. Relevant portion of the Impugned Show Cause Notice reads as under:

> *"The total customs duty of Rs.20,70,903/- on the goods imported without payment of duty under EPCG Authorization should not be demanded for non-fulfillment of export Obligation under Notification No.55/03 dated 01.04.2023 read with the conditions of EPCG Authorization and the Bond executed by the importer"*

4. The specific case of the petitioners is that the Show Cause Notice is time barred in as much as the imports was made by the petitioners as early as on 24.08.2004. The aforesaid Bill of Entry No.673488 was filed for clearance of the capital goods and since the duty that was forgone was secured by Bank Guarantee issued in favour of the respondent, also invoked as early as 26.03.2013.

5. It is therefore submitted that the Show Cause Notice issued by the respondent seeking to impose penalty and demand duty under Sections 112(a) and 111(o) of the Customs Act, 1962, cannot be countenanced.

6. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Senior Standing Counsel for the first and second respondents and the learned Central Government Counsel for the third respondent.

7. *Prima facie*, it appears that the writ petition filed by the petitioner lacks merits.

8. The imported capital goods which were cleared on the strength of EPCG License issued by the authorities under the Foreign Trade (Development and Regulation) Act, 1992, can be confiscated by invoking the provisions of Section 125 of the Customs Act, 1962.

9. The law and the subject has been clarified by the Hon'ble Supreme Court as early as on 02.08.2001, in the case of **Commissioner of Customs (Import), Mumbai** vs. **Jagdish Cancer & Research Center,** 2001 (132) ELT257(S.C.), (2001) 6 SCC 483.

10. As several other issues arise for consideration the Impugned Show Cause Notice, I am of the view, that there is no merits in challenge the Impugned Show Cause Notice as time barred.

11. That apart, issue relating to time barred is always a mix question of law and facts. Therefore, the Impugned Show Cause Notice cannot be quashed under Article 226 of the Constitution of India.

12. Be that as it may, as the writ petition is liable to be dismissed, liberty is given to the petitioners to reply to the Show Cause by filing a reply before the respondent, if it has not been already filed, within a period of thirty (30) days from the date of receipt of a copy of this order. The respondent named in the Show Cause Notice shall thereafter proceed to adjudicate and pass appropriate orders on merits and in accordance with law within a period of thirty (30) days thereafter. The entire proceedings shall be completed within a period of ninety (90) days from the date of receipt of a copy of this order.

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13. This writ petition stands dismissed with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

10.07.2023

Neutral Citation: Yes/No
Index : Yes/No
Speaking/Non-Speaking Order
rgm

To

1. The Joint Commissioner of Customs EPCG,
   Chennai-IV Commissionerate,
   5th Floor, Room No.G512, Ganga Block,
   Custom House, Rajaji Salai,
   Chennai – 600 001.

2. The Assistant Commissioner of Customs EPCG,
   Office of the Commissioner of Customs,
   Custom House, No.60 Rajaji Salai,
   Chennai – 600 001.

3. The Foreign Trade Development Officer,
   Office of Joint Director General of Foreign Trade,
   38-39, Whites Road,
   Chennai – 600 014.

C.SARAVANAN, J.

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