



WEB COPY



W.P.Nos.16051 and 16052 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.16051 and 16052 of 2015
and M.P.Nos.1, 2 and 2 of 2015

M/s.OPG Energy Private Limited,
“Knowledge Tower” Door No.36,
4th Floor, Sanjeevarayanpettai, Little Mount
Anna Salai, Chennai – 600 015
represented by its Authorised Signatory,
Shri Vishal Keyal

... Petitioner in both W.Ps

Vs

1. Union of India,
represented by its Secretary to Government,
Ministry of Commerce and Industry,
Government of India, Udyog Bhavan
New Delhi – 110 007.
2. The Director General of Foreign Trade,
Ministry of Commerce and Industry,
A Wing, Indraprastha Bhawan, I.P.Estate,
Government of India, New Delhi – 110 002.
3. The Joint Director General of Foreign Trade,
Ministry of commerce and Industry,
Government of India, Shastri Bhavan Annexe
Building, No.26, Haddows Road, Chennai – 600 006.

... Respondents in both W.Ps



W.P.Nos.16051 and 16052 of 2015

4. The Tahsildar, Kuttalam,
Mayiladuthurai District
Mayiladuthurai.

.... Respondent in W.P.No.16052 of 2015

PRAYER in W.P.No.16051 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to quash the order of the 3rd respondent sustaining an amount of Rs.2,01,20,365/- imposed as penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 under Order-in-original dated 06.02.2013 being null and void.

PRAYER in W.P.No.16052 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus forbearing the respondents herein from the recovery of an amount of Rs.2,01,20,365/- imposed as penalty under Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 by the 3rd respondent herein under Order-in-original dated 06.02.2013.

In both W.Ps.
For Petitioner : B.Satish Sundar

For Respondents : Mr.V.Chandrasekaran
Senior Panel Counsel

COMMON ORDER

The petitioner, a company, has challenged order-in-original dated 06.02.2013 passed by the Joint Director General of Foreign Trade. The petitioner had, admittedly, applied for the grant of licence under the Export Promotion Capital Goods Scheme (EPCG) for import of capital goods. The petitioner was issued licence on 08.04.2004 as a service provider.



W.P.Nos.16051 and 16052 of 2015

2. In terms of the said licence, the petitioner was directed to cause import of specified goods on the condition that the petitioner should produce and supply to the consumer electricity generated and transmitted from the imported capital goods using conventional fuel, to the extent of 8 times the duty saved on the capital goods. The condition was to be complied with, within a period of 8 years from date of issuance of licence.

3. A show cause notice came to be issued on 29.05.2011 calling upon the petitioner to show cause why action under the Foreign Trade (Development and Regulation) Act, 1992 not be initiated for alleged violation/non-compliance of the licence conditions.

4. The petitioner responded on 17.06.2011 pointing out that it had never utilised the licence. It also sought time to submit evidence in regard to the non-utilisation of the licence. Since no evidence was produced, the impugned order has come to be passed premised upon the position that the petitioner has violated the licence condition.

5. The petitioner has stated in affidavit that they were unable to procure the licence at the relevant point in time. However, subsequent to the passing of the impugned order on 06.02.2013, the petitioner has made a representation before the Joint Director General of Foreign Trade on 12.05.2014 bringing to



W.P.Nos.16051 and 16052 of 2015

his notice that the EPCG licence was never used for any import clearance. The petitioner has surrendered the original licence.

6. Thus what appears to have transpired is that the original licence has been procured by the petitioner, though after passing of the impugned order-in-original. The original customs TRA issued by the Chennai air Customs to Chennai SEA Customs and non-utilization certificate in original are stated to have been produced before the authority.

7. The Asst. Commissioner of Customs (EPCG) vide communication dated 05.05.2014 has stated that the TRA enclosed has not been registered in the system but has not denied the surrender of both the original EPCG licence and non-utilisation certificate.

8. In light of the aforesaid discussion, while sustaining impugned order-in-original dated 06.02.2013, the petitioner is permitted to appear before the Joint Director General of Foreign Trade, Chennai on Monday, the 30th of January, 2023 at 10.30 a.m. without awaiting any further notice in this regard, to pursue its representation filed on 12.05.2014.

9. Let the officer hear the petitioner, verify the records to ascertain the availability/veracity of the EPCG licence and non-utilization certificate and pass an order on the representation filed within a period of four (4) weeks from 30.01.2023. If, in conclusion, he accepts the position of the petitioner that the



W.P.Nos.16051 and 16052 of 2015

licence has, indeed, not been utilised, consequential orders will be passed dropping the levy of penalty.

10. As regards W.P.No.16052 of 2015, where recovery action has been initiated as against the penalty imposed, the same will be subject to orders to be passed by the Joint Director General of Foreign Trade, Chennai as directed in the preceding paragraphs.

11. These Writ Petitions are ordered as above. No costs. Connected Miscellaneous Petitions are closed.

06.01.2023

Index : Yes / No
Speaking Order
sl

To

1. Union of India,
represented by its Secretary to Government,
Ministry of Commerce and Industry,
Government of India, Udyog Bhavan
New Delhi – 110 007.
2. The Director General of Foreign Trade,
Ministry of Commerce and Industry,
A Wing, Indraprastha Bhawan, I.P.Estate,
Government of India, New Delhi – 110 002.

DR.ANITA SUMANTH,J.



W.P.Nos.16051 and 16052 of 2015

sl

3. The Joint Director General of Foreign Trade,
Ministry of commerce and Industry,
Government of India, Shastri Bhavan Annexe
Building, No.26, Haddows Road, Chennai – 600 006.
4. The Tahsildar, Kuttalam,
Mayiladuthurai District
Mayiladuthurai.

W.P.Nos.16051 and 16052 of 2015
and M.P.Nos.1, 2 and 2 of 2015

06.01.2023