IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.24834 of 2015
M.P.Nos. 1 and 2 of 2015

M/s.Pradeep Industries,
Old No.23, New No.45, Chengalvarayan Street,
Triplicane,
Chennai – 600 005.
Rep. By its Partners.

1.B.Rameshchand Bohara
2.Vijayraj Bhawarlal Bohara
3.Usha Ramesh Bohara
4.Rachana Bohara
5.Saroja Bohara
All residing at No.23/45,
Chengalvarayan Street,
Triplicane, Chennai – 600 005. .. Petitioners

vs

1.Additional Director General of Foreign Trade,
Office of the Director General of Foreign Trade,
Udyog Bhavan,
New Delhi – 110 001.

2.Joint Director General of Foreign Trade,
No.26, Haddows Road,
Shastri Bhavan Annexe,
Nungambakkam,
Chennai – 600 006.

3.The Additional Director General of Foreign Trade,
No.26, Haddows Road,
Shastri Bhavan Annexe,
Nungambakkam,
Chennai – 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records pertaining to the impugned order dated 31.03.2015 passed by the first respondent vide his proceedings No.F No.11/454/2012-13/ECA-I/935 dismissing the appeal preferred by the petitioners and thereby confirming the order dated 06.02.2013 passed by the 2nd respondent vide No.04/36/21/54/AM 99 imposing penalty and other directions and quash the same.

For Petitioners : Mr.R.M.D.Nazarullah

For Respondents : Mr.Venkataswamy Babu SCGPC

ORDER

Heard Mr.R.M.D.Nazarullah, learned counsel for the petitioner and Mr.Venkataswamy Babu, learned SCGPC for the respondents.

2. The petitioner was engaged in the business of manufacturing and exporting stainless steel utensils. It claims to have ceased operations in the year 2003. During the time when it was carrying on business it had applied for, and was issued a licence under the Export Promotion Capital Goods Scheme (EPCG Scheme) bearing No. 04500410 dated 11.08.1998 for a CIF value of Rs.2,75,340/-.

3. The licence carried inter alia an obligation to export stainless steel kettles, such obligation to be fulfilled within a period of five years from date of issue of the licence. The petitioner, however, found that it did not need the licence as it had procured the capital goods indigenously, according to it.

4. Proceedings came to be initiated under show-cause notice dated 06.04.2004 calling upon the petitioner to show cause why action not be initiated under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 for the reason that the export obligations had not been satisfied by it within the time stipulated under the Scheme.

5. The petitioner responded pointing out that it had not utilized the licence despite which an order came to be passed on 30.03.2005 to the effect that it was liable for customs duty with penal interest at the rate of 15% for failure to fulfill export obligations against EPCG license.

6. The petitioner challenged the above order in first appeal and suffered an order dated 10.09.2007, confirming the demand

under original order dated 30.03.2005. The petitioner was directed to regularize the export obligation by payment of customs duty with penal interest. On 23.11.2007, the petitioner was duly informed of the liability pursuant to the dismissal of first appeal.

7. The petitioner had taken a decision to accept the aforesaid order and remit the duty and by letter dated 22.12.2007 conveyed as such to the respondents in the following terms:-

> ***"Sub : Customs Duty on EPCG Licence No. 04500410 dated 11.08.1998***
> ***Ref : Letter No. F04/36/021/00054/AM99 dated 23.11.2007 of the Foreign Trade Development Officer, Office of ZJDGFT, Chennai – 6.***
>
> *Consequent upon the Adjudication Order No. 11/48/07-08/ECA.1 dated 12-09-2007 passed by the Office of the DGFT, New Delhi on the above EPCG Licence, we have been directed by the Foreign Trade Development Office, Office of ZJDGFT, Chennai, vide his aforesaid letter (copy enclosed), to pay the Customs Duty on the said EPCG Licence to the Customs Authorities and to produce the receipt to them immediately.*
> *In this connection, we request you to kindly inform us immediately the amount of Customs Duty to be paid by us on the said EPCG Licence to enable us to pay the same immediately. We expect to hear from you immediately.*
>
> *Thanking you,*
>
> *Yours faithfully,*
> *Sd/-"*

With this, the chapter relating to EPCG licence, non-utilization and consequent demand, attains finality.

8. On 23.1.2008, a reminder to the petitioner was issued by the Foreign Trade Development Officer, of the pending demand. In response, the petitioner on 15.02.2008 sought the exact quantum of amount to be paid, to ensure compliance with the appellate order.

9. Here is where the flaw leading to the present litigation has transpired. Instead of simply informing the petitioner as to the quantum of outstanding demand, the officer has passed a second order in original on 06.02.2013. There was absolutely no necessity for the aforesaid order to have been passed as the same cause of action had been addressed vide orders dated 30.03.2005 and 11.09.2007.

10. Be that as it may, the petitioner challenged the order in first appeal leading to the passing of the impugned order dated 31.03.2015 by the first appellate authority. Quite apart from being an aberration in procedure, all that the respondents needed to have done was to convey the quantification of duty and penalty to the

petitioner and ensure its compliance. In fact the petitioner has on all occasions expressed its readiness to pay the amount on being informed of the amount to be paid.

11. On 12.08.2015 when this matter had come up for admission, there was an order of interim stay upon condition that the petitioners remit 50% of the penalty within a period of four weeks from the date of receipt of copy of that order. The petitioner has admittedly complied with this order.

12. Thus, let a demand be raised for the balance, which the petitioner, in light of its acquiescence as noted in the preceding paragraphs, will settle expeditiously. The impugned orders are clearly in violation of procedure apart from being duplication of the orders already passed, and are hence set aside.

13. This writ petition is ordered in the aforesaid terms. No costs. Connected miscellaneous petitions are closed.

08.02.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To

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DR. ANITA SUMANTH,J.

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