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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.1471 of 2023

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

Vs.

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

2.The Foreign Trade Development Officer,
O/o Directorate General of Foreign Trade,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhavan,
New Delhi-110 001.

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

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 10.03.2023 passed in W.P.No.13281 of 2016.

For the Appellant : Mr.B.Satish Sundar

For the Respondents : Mr.A.R.Sakthivel
CGSC

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

We have heard Mr.B.Satish Sundar, learned counsel for the appellant and Mr.A.R.Sakthivel, learned Central Government Standing Counsel for the respondents.

2. The appellant had filed a writ petition, bearing W.P.No.13281 of 2016, challenging the order passed by the first respondent dated

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14.12.2015. Under the said order, the request of the appellant to relax the condition of mentioning the EPCG licence number, the date of licence and the name of EPCG licence holder on the shipping bills which have not been submitted is rejected. The RA Chennai was directed to initiate necessary action, including action for recovery of duty and interest under the Foreign Trade (Development and Regulation) Act, 1992, as amended.

3. The learned Single Judge dismissed the writ petition. Aggrieved thereby, the present writ appeal.

4. The appellant was issued with EPCG licence for import of machineries and capital goods for its export unit. The CIF value of capital goods allowed to be imported is USD 5,03,800.12. The export obligation to be fulfilled is USD 18,75,383 within five years from the date of utilization of the licence. The actual utilization of the licence for import cost is USD 4,68,845.67. The appellant sought for extension of time on 25.10.1999 for fulfillment of the export obligation. A similar request was made on 27.9.2000 and 15.10.2001

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respectively. On or about, 11.7.2002, the DGFT issued a policy Circular No.7/2002 stipulating certain conditions. A demand notice was issued to the appellant by the second respondent directing the appellant to pay customs duty forgone proportionately with respect to the utilization of the licence on account of non-fulfillment of export obligation.

5. Learned counsel for the appellant further submits that the appellant had undertaken third party exports. The appellant had complied with all conditions enumerated in the Circular No.7/2002 dated 11.7.2002, however, was not in a position to comply with condition no.(v). Learned counsel for the appellant submits that condition no.(v) is a procedural one and not substantive condition. The procedural condition can be relaxed.

6. According to learned counsel, the appellant had submitted all the documents required, such as no objection certificate from the third party for accepting the subject exports for fulfillment of EO against the EPCG licence obtained by the licence holder and an

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affidavit/undertaking in a stamp paper duly certified by an independent Chartered Accountant declaring that neither the licence holder nor the third party has counted/shall count in future, the exports shown against a particular EPCG licence towards fulfillment of EO against any other EPCG licence. The appellant had also provided list of EPCG licences obtained by the licence holder as well as by the third party and also a declaration from the third party in a stamp paper duly certified by an independent Chartered Accountant declaring that the products exported for fulfillment of EO by them on behalf of the licence holder as per the details given.

7. According to learned counsel, the condition that the relevant shipping bills shall contain both the names of the third parties and the licence holder was not complied with. The documents submitted in compliance with condition nos. (i) to (iv) of the said circular would be sufficient to take care of condition no. (v). This aspect has not been considered by the learned Single Judge.

8. According to learned counsel, the non-compliance of the

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procedural condition would not be fatal to the case of the appellant. Reliance is placed on the judgment of the Apex Court in the case of *Mangalore Chemicals and Fertilizers Limited v. Deputy Commissioner, reported in 1991 (55) E.L.T. 437 (S.C).*

9. Learned Central Government Government Standing Counsel for the respondents submits that the appellant even could not place on record the shipping bills. The appellant admitted that the shipping bills did not contain the names of third parties and licence holder and that the EPCG licence number was not mentioned. The conditions in the circular were not complied with. No error has been committed by the learned Single Judge while dismissing the writ petition.

10. We have considered the submissions canvassed by learned counsel for the parties.

11. The Circular No.7/2002 dated 11.7.2002 was issued by the Ministry of Commerce and Industry, Directorate General of Foreign Trade, New Delhi, on the basis of the representations given from

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various exporters for condonation of procedural lapse of not mentioning the EPCG licence number and the date on the shipping bills relating to the exports for fulfillment of EO under EPCG scheme. A decision was taken under para 2.5 of the EXIM policy that such procedural lapse may be condoned in relaxation of the existing policy provisions subject to submission/verification of the documents as enumerated therein.

12. It is the case of the appellant that the appellant had engaged third party exports. The conditions, in case of third party exports as per Circular No.7/2002, read thus:

> *"(i) No objection certificate from the 3rd party(s) for accepting the subject exports for fulfillment of EO against the EPCG licence obtained by the licence holder.*
>
> *(ii) An Affidavit/undertaking in a stamp paper, duly certified by an independent CA, declaring that neither the licence holder nor the 3rd party(s) has counted/shall count in future, the exports shown against a particular EPCG licence towards fulfillment of EO against any other EPCG licence.*
>
> *(iii) List of EPCG licences obtained by the licence holder*

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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 licence holder as per details given in the statement of exports, were manufactured by the licence holder.

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

13. In the present case, we need not consider the contention of the respondents that the appellant had not fulfilled the export obligation within the stipulated period. The same was not the ground in denying the benefit to the appellant.

14. It is worth noting that the appellant even failed to place on record the shipping bills. Moreover, the appellant admitted that it did not mention the names of third parties and the licence holder on the shipping bills. It would be difficult for the respondents to verify the genuineness of the claim in the absence of the names of third parties on the shipping bills so also the names of the licence holder.

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Paragraph 5.7.1 of the Hand Book of Procedures prescribes that EPCG licence number and date shall be endorsed on the shipping bills which are proposed to be presented towards discharge of export obligation. The appellant did not comply with the same. Moreover, the shipping bills were not placed before the respondents so as to enable the respondents to verify the same. We do not find any error in the order passed by the respondents negativing the claim of the appellant.

15. In the light of the above, the writ appeal stands dismissed. There will be no order as to costs.

(S.V.G., CJ.) (D.B.C., J.)
08.12.2023

Index : Yes/No
Neutral Citation : Yes/No
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