



WEB COPY



W.P.No.12832 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.12832 of 2020 and
WMP.Nos.19625 of 2020 & 1843 of 2021

Pharmed Limited
Pharmed Gardens,
Whitefield Road, Bangalore-560048,
Karnataka

... Petitioner

Vs

1.Commissioner of Customs,
Ministry of Finance
Custom House, No.60, Rajaji Salai
Chennai – 600 001.

2.Director General of Foreign Trade
Ministry of Commerce and Industry (GOI)
Udyog Bhavan, New Delhi
also, at, 6th Floor, Kendriya Sadan,
C and E Wing, 17th main, Koramangala 2nd Block,
Koramangala, Bengaluru, Karnataka 560 034.
also at, Shastri Bhavan, Haddows Road, Subba Road
Avenue, Nungambakkam, Chennai,
Tamil Nadu 600 006.

(R2 Cause title amended vide order dated 29.10.2020
made in WMP.19627/2020 in WP.12832/2020
by this Court)



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3.Union of India

Department of Legal Affairs

Shastri Bhawan, New Delhi-1

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records Respondent No.2 in relation to Impugned Order number HQ/ECA-II/TR296 dated 04.02.2004 which has not been served on the Petitioner and to quash the said impugned Order passed by Respondent No.2 and consequentially direct Respondent No.1 to produce the files in relation to the License Nos.07000038, 07000621, 07000620, 07000762.

(Prayer amended vide order dated 29.10.2020 made in WMP.19624/2010 in WP.12832/2020 by this Court)

For Petitioner : Mr.K.Premchandar

For Respondents : Mrs.R.Hemalatha (for R1)
Senior Standing Counsel

Mr.K.Srinivasa Murthy (for R2 and R3)
Senior Panel Counsel for Central Government

ORDER

Read this order in conjunction with and in continuation of order dated 13.03.2023 extracted below:

'The petitioner seeks removal from the Denied-Entity-List (DEL). There has been significant elapse of time from 1997 when advance licenses has been issued to the petitioner. Subsequently, it appears that an order was passed on 20.02.2011 putting the petitioner on the DEL.'



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2. The counter filed by the Director General of Foreign Trade (DGFT) at para 7 makes it clear that this was only an interim measure pending other action that were being contemplated at that time by way of enforcing obligations under the advance licenses.

3. Neither the counter filed by the DGFT/R2, nor that filed by the Commissioner of Customs/R1 throw any light on whether there is any violation that has been committed qua the advance licenses to justify the retention of the petitioner's name in the DEL.

4. Both the parties before me plead that significant time has elapsed from 1997 when the advance licenses were issued and hence records are unavailable. The petitioner claims that its office were affected by flood leading to complete loss of records and neither of the parties have focused on whether there is any violation, which is the crux of the matter.

5. Mrs.R.Hemalatha, learned Senior Standing Counsel for R1 and Mr.K.Srinivasamurthy, learned Senior Panel Counsel for Central Government on behalf of R2 and R3 are given a week's time to obtain a confirmation in writing from R1 and R2 as to whether there has been any adverse measures have been taken against the petitioner either by way of show cause notice or orders passed reversing the advance licenses issued to the petitioner.

6. Call this matter on 23.03.2023 in the same position.'

2.The prayer originally was for a mandamus directing the respondents to produce the complete files in relation to License bearing Nos.07000038, 07000621, 07000620 and 07000762. In the course of hearing, since the respondents have referred to an order dated 04.02.2004, a copy of which was admittedly never served on the petitioner and which was the basis for the petitioner's name to figure in the DEL, respondents were asked to furnish a copy of that order and the prayer was also amended to a certiorarified mandamus quashing order dated 04.02.2004.



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3.In light of the events as noted in order dated 13.03.2023, it is crystal clear that there is not a scrap of paper available on the basis of which the petitioner's name has been included in the Denied-Entity-List. Mrs.R.Hemalatha, learned Senior Standing Counsel for R1 and Mr.K.Srinivasa Murthy, Senior Panel Counsel for Central Government, for R2 and R3 also categorically confirm the aforesaid position.

4.Learned Senior Standing Counsel for R1 also confirms that no adjudication or any proceedings for that matter, have been commenced as against the petitioner till date. Seeing as the advance licences relate to the period 1997, there is no justification to retain the petitioner's name in the DEL and mandamus is issued forthwith to R2 to delete the name of the petitioner from the Denied-Entity-List.

5.This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

23.03.2023

vs

Index : Yes / No

Speaking Order

Neutral Citation : Yes



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Dr.ANITA SUMANTH,J.

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