IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.20368 & 20371 of 2023
and WMP.Nos.19732, 19733, 19736 & 19737 of 2023

K.P.N.Textile Mills Private Limited
Represented by its Managing Director
Mr.P.C.Murugesan
13(212) R.S.Road
Pallipalayam (PO)
Erode – 638 006. … Petitioner in both WPs

Vs

1.The Office of the Zonal Additional
Director General of Foreign Trade
26, Haddows Road
Shastri Bhavan Annexe
Chennai – 600 006.

2. The Office of the Joint Director
General of Foreign Trade
1544, India Life Insurance Annexe, I Floor
Trichy Road, Coimbatore – 641 018.

3.The Manager
State Bank of India
Sankari Main Road
Pallipalayam
Erode – 638 006. … Respondents in both WPs

Prayer in WP.No.20368 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in the communication issued by the second respondent vide File No.32/21/021/00497/AM12 dated 12.06.2023 for invocation of Bank Guarantee and quash the same as bad in law, in violation of principles of natural justice and judicial discipline, lacking jurisdiction, arbitrary, perverse ad being violative of Articles 14 and 19(1)(g) of the Constitution.

Prayer in WP.No.20371 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus , calling for the records in the order passed by the first respondent vide File No.32/21/021/01354/AM II dated 20.03.2023 and quash the same as bad in law, in violation of principles of natural justice and judicial discipline, lacking jurisdiction, arbitrary, perverse ad being violative of Articles 14 and 19(1)(g) of the Constitution, and consequently direct the first respondent to issue a Export Obligation Discharge Certificate.

For Petitioner	: Ms.Jayalakshmi.P
For Respondents	: Mr.Kumaraguru Senior Panel Counsel for R1 & R2

COMMON ORDER

The petitioner herein is engaged in manufacture of textile goods and has obtained a EPCG licence from Director General of Foreign Trade. In terms of the scheme, the petitioner is entitled to import machineries free of custom duty, but subject to the condition that the petitioner should export eight times the value of the custom duty within a period of 8 years from the date of issuance of licence.

2. The petitioner obtained the licence on 13.09.2011, and the custom duty waiver that was given was Rs.13,77,135/-. Now in terms of the licence obligation, the petitioner is required to export eight times this value over a period of eight years, and the eighth year expired on 12.09.2019. As per the norms of the scheme (Refer Clause No.5.17 in Handbook of Procedure), in the eventuality of the petitioner's failure to export eight times the value of the custom duty within a period of eight years, the petitioner/importer would be entitled to seek extension for another two years, but on payment of certain charges.

3. It is not in dispute that the petitioner has not complied with its export obligation within a period of eight weeks and hence, it has applied for an extension for another two years vide his communication dated 28.09.2019, and also claims that requisite charges for extension too has been paid. However, no intimation from DGFT has been received whether extension has been given or not. According to the petitioner, between 13.09.2019 and 29.01.2021, it has fulfilled the entire export obligations, which according to him, it was done through five shipments. The last shipment was made on 29.10.2021, after the expiry of two year extended period. The petitioner claims that during COVID days, a six months time extension has been extended to all EPCG licensees as default, and if this six months is added up, then according to the petitioner, it would have fulfilled the entire export obligations.

4. Be that as it may, on 02.02.2022, the second respondent had issued two communications, one of which relates to forfeiture of bank guarantee and another is the show cause requiring the petitioner to show cause as to why an action should not be taken for non-compliance of export obligations. Time was subsequently extended at the request of the petitioner, and the

petitioner too furnished necessary documents to support the contention.

5. The second respondent issued a communication dated 06.06.2022, through which the petitioner was informed that EOP extended to the petitioner had expired on 12.09.2021 and hence, automatic extension as per notification could not be considered. It also further reads that since third party shipping bills were submitted without endorsement of relevant EPCG authorisation number, the petitioner was requested to regularise the case by paying duty and interest. Aggrieved by the same, the petitioner approached the appellate authority namely the Zonal Additional Director General of Foreign Trade, the first respondent herein.

6. The first respondent vide its communication dated 15/ 20.03.2023, had informed the petitioner that upon perusal of documents, it was seen that no original order was passed by the second respondent yet. The communication concludes the statement that regarding third party shipping bills, the objections raised by the Regional Authority, the second respondent is valid and the petitioner was advised to follow the directions given by him. The said communication of the first respondent reads as below :

"This is with reference to your above appeal filed before the appellate authority. In this regard, it is informed that on perusal of your documents, it is seen that no Order in Original has been issued. Only a deficiency letter dated 06.06.2022 has been issued against which this present appeal has been filed. Hence you are requested to reply to the deficiency letter issued by the RA Coimbatore, to process your case further. It is also informed that you may apply to RA Coimbatore as per Public Notice No.53 dated 20.01.2023 for extension of export obligation period. Regarding third party shipping bills, the objections raised by the RA is valid and you are advised to follow the directions given by RA Coimbatore."

7. Now the petitioner has come before this Court with two petitions :

A) W.P.No.20368 of 2023, wherein it challenges the forfeiture of bank guarantee, i.e., challenging the proposal to forfeit the bank guarantee even when the cause of action is pending.

B) W.P.No.20368 of 2023, wherein it challenges the order of the first respondent, the appellate authority.

8. This Court was informed that during the pendency of these proceedings, the bank guarantee offered was forfeited and it was encashed.

9. MrA.Kumaraguru, learned Special Panel Counsel for Government of India appearing for the respondents brought to the notice of the Court that in terms of the impugned order of the first respondent, no final order yet has been passed. This would imply that the final decision on the notice dated 02.02.2022, is still pending with the second respondent, and necessarily the petitioner can always put forward its case before the second respondent. In this juncture, the learned counsel for the respondents brings to the notice of the Court that the appellate authority appears to have made a statement, even when the original order was not passed by the second respondent, that a certain statement made by the second respondent in its communication dated 06.06.2022, to the effect that a third party shipping bills has been submitted without relevant EPCG authorisation, and required the petitioner to regularise it by paying duty and interest, itself found the same is valid.

10.1 After carefully hearing both sides, it become evident that the petitioner still has an opportunity to present the case before the second respondent.

And the second respondent can afford an opportunity of personal hearing to the petitioner to explain / justify all the aspects that finds a place in its reply to the show cause notice dated 02.02.2022. Having said that, this Court also underscores that since the second respondent itself has not taken a final call on the action proposed to be taken vis-a-vis the show cause notice that it had issued, it can ignore whatever affirmative statement in the impugned proceedings of the first respondent dated 15/ 20.03.2023, wherein it has entered a finding regarding the third party shipping bills, and as to the correctness of the objection raised by the second respondent to third party shipping bills. This issue is also left open. Accordingly, W.P.No.20371 of 2023 is disposed of.

10.2 So far as W.P.No.20368 of 2022 is concerned, since the bank guarantee has been encashed, nothing survives for the present, and if the petitioner has any right to work out her remedy, that necessarily has to wait till the second respondent takes a final call on the show cause notice dated 02.02.2022.

10.3 The second respondent is now required to take a final decision in the show cause notice in the manner indicated above within a period of twelve weeks from the date on which this order is hosted in the official website.

10.4. Accordingly, W.P.No.20368 of 2023 is closed. Connected miscellaneous petitions are closed. No costs.

12.07.2023

Index : Yes / No
Speaking order / Non-speaking order
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N.SESHASAYEE.J.,

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