



W.P.No.25348 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM: JUSTICE N.SESHASAYEE

WP.No.25348 of 2023
& WMP.No.24754 of 2023

Danalakshmi Paper Mills Pvt Ltd.,
rep. by its authorized Signatory,
No.31, Bharati Park, 7th Cross,
Sai Baba Colony,
Coimbatore – 641 011.

...Petitioner

-Vs-

Office of the Joint Director General
of Foreign Trade,
Ministry of Commerce and Industry,
1544, India Life Building (Annexe) 1st Floor,
Trichy Road, Coimbatore – 641 011.

...Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Show Cause Notice No.F.No.35/21/021/00306AM15 dated 14.02.2023 issued by the Respondent and quash the same.

For Petitioner : Mr.Jayesh B.Dolia,
Senior counsel
Asst. by Ms.Varsha.N

For Respondent : Mr.K.S.Jayaganeshan,
Central Government Counsel



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ORDER

The petitioner company had earlier obtained a license for import of certain machinery. As per the terms attached to the import license, the petitioner is supposed to export his manufacture within six years, which would entail the petitioner the benefit of exemption from paying the Customs Duty. This condition was not complied.

2. In the meantime, the petitioner company ran into a financial crisis, forcing the creditors to move the NCLT under IBC. The Resolution Professional had obtained a few resolution plans and the same came to be discussed and the resolution plan enabling the present management to take over the petitioner company came to be approved by NCLT.

3. After the new management took over the affairs of the petitioner company, the respondent issued the impugned show cause notice dated 14.02.2023 alleging that the company did not fulfil its obligation created under the license for importing the machinery and hence, it recalled the Customs Duty payable along with penalty. This is now under challenge.



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4.The learned counsel for the petitioner discussed it on two scores (1) inasmuch as the new management has come to replace the old management, the liability if at all any, payable by the petitioner company dies with the old management and it cannot be transferred to the new management. (b) the respondent ought to have come before the Resolution Professional and made his claim and participated in the resolution plan and process.

5.The entire resolution process and the take over of the company by the present management is based on the liability that was discussed by the Resolution Professional and approved by the Committee of Creditors. The liability that stands outside the purview of the Resolution Professional cannot be fastened on the petitioner.

6.The learned counsel for the petitioner further submits that the current management of the petitioner Company has already given its reply to the show cause notice.



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7.Mr.K.S.Jeyaganeshan, learned Central Government Counsel takes notice for the respondent.

8.Interesting questions they are but, it is for the respondent to take a call on them. The respondent is now directed to dispose of the dispute that it has raised through its show cause notice dated 14.02.2023, within a period of twelve (12) weeks, after giving due and effective hearing to the petitioner to defend the show cause notice through a personal hearing.

9.The Writ Petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

10.Till a final decision is taken, the respondent is restrained from taking any precipitative action vis-a-vis the show cause notice issued.

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Index : Yes/No

Internet : Yes/No

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N.SESHASAYEE, J.,

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