IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.31781 of 2022 and
W.M.P. No.31222 of 2022

M/s.Kawarlal & Co.
No.27, Raghunayakulu Street
Chennai - 600 003
By its Proprietor K.Ramlal Jain ... Petitioner

Vs.

1.The Additional Director General of Foreign Trade
Ministry of Commerce & Industry
26, Haddows Road
Shastri Bhawan Annexe Building
Chennai - 600 006

2.The Joint Director General of Foreign Trade
O/o.the Additional Director General of Foreign Trade
Ministry of Commerce & Industry
26, Haddows Road
Shastri Bhawan Annexe Building
Chennai - 600 006 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the respondents herein, to permit the operation of the Importer Exporter Code (IEC) no.0402001630, issued in the name of M/s.Kawarlal & Co., the petitioner herein, by considering petitioner's representation dated 30.05.2019.

For Petitioner : Mr.S.Baskaran

For Respondents : Mr.R.Rajesh Vivekananthan
Dy. Solicitor General for R1 & R2

ORDER

The petitioner herein is a proprietary concern and it has engaged in the business of importing and trading of certain articles relevant for pharmaceuticals company, food industries, beverage industries etc.

2.The petitioner has been in this business for over six decades. While so, on 15.05.2019, the second respondent herein issued a show cause notice to the petitioner, wherein it alleged that the import of certain articles require a licence and required the petitioner to produce the materials relating to the import it has made between 2009 and 2014. The petitioner has issued its reply dated 17.05.2019, wherein it is stated that, (a) the articles that it had imported are used in multi various industries, and no licence was required; (b) that, it is the Customs Authority, who would be issuing licence for import of these articles, and they have not indicated the need for obtaining the licence and indeed, they have even cleared the goods. On the same day, the petitioner also appeared before the Authority and on the same day the petitioner's IE Code was suspended.

3.This was challenged by the petitioner in W.P. No.19527 of 2019 on certain grounds, and it was allowed by this Court on 22.07.2019, and ordered a fresh enquiry not by the second respondent, but by its counter part in Bangalore. The petitioner therefore, appeared before the Authority in Bangalore on 26.07.2019. On 08.08.2019, the JDGFT, Bangalore passed an order confirming the earlier order of suspension passed by the second respondent.

4.This was challenged by the petitioner in W.P. No.25693 of 2019. Yet another time, this Court set aside the order of suspension and remanded the matter for a *de novo* consideration by the JDGFT, Bangalore. The Authority passed an identical order yet another time. This time, Vide its proceedings dated 28.10.2019 it had indicated that the petitioner has not produced any document for the import from 2002 to 2019, something which is in variance with the earlier show cause notice dated 15.05.2019. It also made a reference to a certain case, which is under the investigation of the CBI. The petitioner would challenge this order Vide W.P.No.31195 of 2019. This Court Vide its order dated 06.11.2019, directed the petitioner to prefer an internal appeal. Aggrieved by the same, the petitioner preferred W.A.No.4071 of 2019.

5.Now, during the pendency of W.A.No.4071 of 2019, the respondent revoked the order of suspension, following which, the petitioner made two imports, one from the US and another from Japan vide Bill of Entry dated 19.01.2021 and 23.08.2022. On both the imports, the petitioner had paid necessary import duties, and the customs authority too had allowed the petitioner to clear the goods. Since the *status quo ante* was restored, the petitioner withdrew W.A.No.4071 of 2019 on 02.08.2022.

6.It is in this circumstances, the petitioner submits that they have been prevented from importing any goods, and this time even without a formal proceedings of any statutory authority. All which has been done is an oral instruction and the petitioner has not been heard at any time in this matter.

7.The learned counsel for the petitioner submits that under the Drug Rules 1945, made under the Drugs and Cosmetics Act, 1940, the licence has to be obtained by the foreign manufacturer of drugs, and not by the petitioner. The learned counsel also submitted that under Section 8 of the Foreign Trade

(Development & Regulation) Act, 1992, the respondent cannot directly cancel the petitioner's IE Code. They have to first call for an information, and thereafter, required to issue a show cause notice. Not one of these requirements was followed in the instant case. All the same, without adducing any reason petitioner's IE Code has been suspended.

8.He further added that, what is significant here is that during the pendency of W.A.No.4071 of 2019, the petitioner did import two consignments, one from the US and another from Japan, which itself would indicate that the petitioner was allowed to operate its IE Code for importing goods.

9.1.The learned Deputy Solicitor General appearing for the respondents submitted that the order passed by the JDGFT, Bangalore on 28.10.2019 is a speaking order and he had considered all the aspects. It is true that the petitioner challenged this in WP.No.31995 of 2019, wherein, this Court had directed the petitioner to approach the Appellate Authority constituted under the Act. However, the petitioner opted to challenge this order in W.A.No.4071 of 2021. Contrary to the contention of the petitioner, no Authority at any point of time had revoked the suspension earlier imposed Vide order dated

28.10.2019, and the two imports made, one from the United States of America and another from Japan, were illegally made by the petitioner with the connivance of the Customs Authority.

9.2. While the petitioner had impleaded the Customs Authority in all the earlier petitions, in the instant case, he has conveniently chosen not to implead it. When the respondent got wind of this, it ensured that the IE Code is suspended. So far as the petitioner's allegation that Section 8 of the Foreign Trade (Development & Regulation) Act, 1992 was not applied is concerned, the order dated 28.10.2019 passed by the JDGFT, Bangalore shows that Section 8 of the said Act has been complied more than adequately by the Authorities.

10.When this Court sought some clarification from the petitioner as to how the petitioner's suspension order during the pendency of W.A.No.4071 of 2019 was revoked, the learned counsel submitted that it was telephonically communicated by an Authority that it will be done on the withdrawal of W.A. No.4071 of 2019. He also submitted that he, as the petitioner's counsel has made appropriate endorsement for withdrawing the appeal in W.A. No.4071 of 2019 and added that the learned counsel for the respondents is too aware of this.

11.After carefully considering the rival submissions and given the fact the petitioner spends more time in courts in the last four years than doing its business, it is only appropriate that it works out its remedy before the first respondent. The petitioner is directed to file its appeal within a period of two weeks, and once the same is filed, the first respondent is required to entertain the same without reference to any period of limitation provided therefor and dispose the matter after giving an opportunity of proper and effective hearing to the petitioner on all aspects, for which it prefers an appeal.

12.Accordingly, the writ petition is disposed of. However, there is no order as to costs. Consequently, the connected writ miscellaneous petition is closed.

31.08.2023

Index : Yes/No
Asr

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N.SESHASAYEE, J.,

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