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W.P.No.13896 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13..02..2023

Coram

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Writ Petition No.13896 of 2017

and

W.M.P.Nos.15085 to 15087 of 2017

M/s.Kothari Industrial Corporation Ltd.,
Rep. by its Chairman & Managing Director,
Mr.Pradip D.Kothari
Having Office at
No.114, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600034.

..... Petitioner

-Versus-

- 1.Joint Director General of Foreign Trade,
(Enforcement cum Adjudication)
Government of India,
Ministry of Commerce & Industry,
Office of the Zonal Joint Director General of
Foreign Trade, Shastri Bhavan Annexe-26,
Haddows Road, Chennai 600 006.
- 2.Deputy Director General of Foreign Trade,
(Enforcement cum Adjudication)
Government of India,
Ministry of Commerce & Industry,
Office of the Zonal Joint Director General of
Foreign Trade,
Shastri Bhavan Annexe-26,
Haddows Road, Chennai 600 006.



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3.The District Collector of Chennai,
No.62, Rajaji Salai, Chennai 60001.

4.The Tahsildar,
Egmore-Nungambakkam Taluk,
Chetpet, Chennai 600031.

5.The Chief Manager,
State Bank of India,
Nungambakkam Branch,
110/1, Mahathma Gandhi Road,
Nungambakkam, Chennai 600034.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent culminated in the proceedings vide Order No.1 of AM-07 (Issued from F.No.I (261)/ECA/CHE/AM-02/ADJ), dated -.04.2007 and to quash the same.

For Petitioner : *Mr.P.V.Balasubramaniam,SC for
Mr.T.Mahendran*

For Respondents : *Mr.K.Srinivasa Murthy, Senior
Central Government Panel
Counsel for RR1 and 2*

*Mr.Alagu Goutham,
Government Advocate for RR3 and
4*

Mr.K.Ravindranath for R5



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ORDER

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2. Instead the petitioner would seek to point out flaws in the impugned order to state that (i) the show cause notice was issued in 2001 but the order itself has been passed only in 2007, (ii) that the imposition of dual penalties is contrary to the Act and that (iii) the officer passing the impugned order does not have requisite jurisdiction to do so.

3. As regards the third submission, learned counsel for the respondent would point out that the power of enforcement-cum-adjudication had been delegated to the Deputy Director General of Foreign Trade by the Joint Director of Foreign Trade in terms of Section 13 of the Foreign Trade (Development and Regulation) Act, 1992. This explanation satisfies the Court quite apart from the



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fact that this issue has not even been raised in the writ petition.

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4. As regards the other two points raised, they touch upon the merits of the matter which had to have been agitated by the petitioner in appeal or if the petitioner were of the view that this Court should have been approached under Article 226 of the Constitution of India, in a timely fashion and within the period of statutory limitation provided. The Hon'ble Supreme Court in **Assistant Commissioner (CT) v. Glaxo Smithkline Consumer Health Care Limited** (C.A.No.2413/2020 dated 06.05.2020) has reiterated the position that even writ petitions must be filed within the period of limitation provided under the relevant statute, failing which there must be an explanation for delay to be considered on its strength by the Court. In the present case there is no explanation at all available, let alone an acceptable one. Thus, this writ petition is hit by laches and is dismissed in limine.

5. As regards a last ditch attempt, petitioner submits that there is an error apparent on the the face of record for which it may be permitted to seek review under Section 17 of the Foreign Trade (Development and Regulation) Act, 1992

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on resting the so-called error; I find this submission misconceived on merits. The quantification of the penalty is of a sum of Rs.1.5 Crores (approx). The officer states that this is equivalent to CIF value of Rs...../- (blank in the order). This sought to be highlighted by the petitioner.

6. However, Section 11(2) of the Act in terms of which this penalty has been imposed, prescribes a range between Rs.10,000/- to five times the value of the goods. The CIF value in this case is Rs.85,65,953/- and hence, going by the book, the office could have imposed penalty of five times of the aforesaid sum. He has however, restricted himself to less than twice the value of the goods. There is thus no apparent rectifiable error.

7. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

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Index : yes / no
Neutral Citation : yes
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To

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2. Deputy Director General of Foreign Trade,
(Enforcement cum Adjudication)
Government of India,
Ministry of Commerce & Industry,
Office of the Zonal Joint Director General of
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DR. ANITA SUMANTH.J.,

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