



WEB COPY



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018
and W.M.P.Nos.35717, 35708, 35716, 35720 and 37755 of 2018

M/s.Leo Prime Comp Pvt Ltd.,
Rep. by its Managing Director Mr.Vasudevan
No.61 & 62, Lakshmanan Nagar,
Kandanchavadi,
Chennai-6.

... Petitioner in all W.P's

vs.

1.The Union of India,
Rep. by its Secretary,
Ministry of Commerce,
Sastri Bhawan, New Delhi.

2.The Joint Director,
Director General of Foreign Trade,
4th & 5th Floor, Sastri Bhawan annexure,
Haddows Road,
Chennai-6.

3.Foreign Trade Development Officer,
O/o. The Additional Director General of Foreign Trade,
4th & 5th Floor, Sastri Bhawan annexure,
Haddows Road,
Chennai-6.

... Respondents in all W.P's



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

Prayer in W.P.No.32552 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in F.No.04/21/21/670/AM-12 dated 20.11.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the second respondent to dispose the petition application dated 11.09.2018 on merits.

Prayer in W.P.No.30626 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in F.No.04/21/21/147/AM-11 dated 01.11.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the second respondent to dispose the petition application dated 15.10.2018 on merits.

Prayer in W.P.No.30629 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in F.No.04/21/21/262/AM-11 dated 01.11.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the second respondent to dispose the petition application dated 15.10.2018 on merits.



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

Prayer in W.P.No.30631 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in F.No.04/21/21/919/AM-11 dated 01.11.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the second respondent to dispose the petition application dated 15.10.2018 on merits.

Prayer in W.P.No.30632 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in F.No.04/21/21/1164/AM-10 dated 29.10.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law and direct the second respondent to dispose the petition application dated 08.08.2018 on merits.

For Petitioner	: M/s.D.Vijayakumar in all W.P's
For Respondents	: Mr.R.Srinivasa Murthy in W.P.No.32552 of 2018
For Respondents	:Mr.J.Madanagopal Rao Senior Panel Counsel (in W.P.Nos.30626, 30629, 30631 & 30632 of 2018)



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

WEB COPY

COMMON ORDER

The issue raised in all these writ petitions is one and the same. Hence, with the consent of the learned counsel for the petitioner as well as the learned counsel appearing for the respondents, all these writ petitions are taken up together and are disposed of by this common order.

2.The case of the petitioner is that the petitioner / company is a manufacturer of high precision component used in various automobile sectors. The said company imported capital goods under EPCG scheme introduced by the first respondent and was granted license from year 2004 to 2008. According to which, the petitioner / company fulfilled the export obligations. Thereafter, the petitioner company again applied for EPCG license and obtained the same in the year 2011, and the company was granted 6 years time to fulfill the export obligation. Unfortunately, that could not be fulfilled as it suffered financial hardships. As a result of which, the said company was unable to pay its EMIs to the Bank and the bankers declared the petitioner / company's loan account as non performing asset (NPA) in the year 2014. Thereby, the petitioner company was unable to



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

fulfill the export obligation within the stipulated period. Therefore, the petitioner company approached the second respondent and filed several applications for extension of the EPCG license. However, the third respondent, without issuing notice, rejected the petitioner's application vide impugned order. Challenging the same, these writ petitions have been filed.

3.Learned counsel for the petitioner / company submitted that as per Section 9 (4) of the Foreign Trade (Development and Regulation) Act, 1992, no such suspension or cancellation shall be made except after giving the license holder a reasonable opportunity of hearing. However, in the present case, without providing sufficient opportunity to the petitioner / license holder, the authority has passed the impugned order, which is not sustainable. Accordingly, he prays for allowing the Writ Petition.

4.Per contra, the learned counsel appearing for the respondents submitted that Section 9(4) of the Foreign Trade (Development and Regulation) Act, 1992 applies only in respect of suspension and cancellation of the license or certificate issued by the second respondent. Whereas, the



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

applicable provision in the case on hand that has to be referred to is Clause

5.11 (a), (b) and (c) of the Export Promotion Capital Goods (EPCG)

Scheme, which makes it clear that the concerned RA may consider one or more requests for grant of extension in export obligation period on payment of composition fee equal to 2% of proportionate duty saved amount on unfulfilled export obligation or an enhancement in export obligation imposed to the extent of 10% of total export obligation imposed under authorization. Such extension in export obligation can be for a maximum period of two years upon production of necessary documents. However, in the present case, the petitioner merely made a representation for extension of export obligation period without paying necessary fees with production of supporting documents, which is not sustainable. Accordingly, he prays for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

6. On a perusal of the materials available on record, it is an admitted



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

fact that the petitioner / company had obtained the EPCG license in the year 2011, and the said EPCG license is only valid for a period of six years to fulfill the export obligation. Unfortunately, that could not be fulfilled by the petitioner / company as it suffered financial hardships. Thereby, he filed an application for extension of export obligation period. However, the said application was rejected on the ground that Clause 5.11 of the EPCG Scheme was not complied. Hence, the present impugned order has been passed.

7. For a better appreciation, Clause 5.11 of the EPCG Scheme read as follows:

5.11 (a) Concerned RA, may consider one or more requests for grant of extension in export obligation period, on payment of composition fee equal to 2% of proportionate duty saved amount on unfulfilled export obligation or an enhancement in export obligation imposed to the extent of 10% of total export obligation imposed under authorization, as the case may be, at the choice of exporter, for each year of extension sought. Such first extension in EO period can be for a maximum period of 2 years.



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

(b) Extension in EO period beyond two years period available above, may be considered, for a further extension upto 2 years with a condition that 50% of duty payable in proportion to the unfulfilled export obligation is paid by authorization holder to custom authorities before an endorsement of extension is made on EPCG authorization by RA concerned. In such cases, no composition fee is to be paid or additional EO is to be imposed as prescribed in the Para above. In case the firm is still not able to complete the export obligation, duty already deposited will be deducted from total duty plus interest to be paid for EO default.

(c) However for zero duty EPCG scheme only one extension of 2 years in export obligation period shall be available subject to conditions mentioned above.

Extension in export obligation period shall also be subject to such terms and conditions as may be prescribed by competent authority.

8. In view of the above, it is evident that the petitioner's request will not be considered unless he intends to comply with the provision of EPCG Scheme on payment of necessary fees with production of supporting



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

documents. Hence, the prayer sought for in the Writ Petition cannot be granted.

9.The Writ Petition is dismissed accordingly. No Costs. However, the petitioner is at liberty to make a fresh application on payment of necessary fees with supporting documents before the authority concerned. Consequently, the connected miscellaneous petitions are closed.

16.03.2023

Index : Yes/No
Speaking order : Yes/No
anu

To:

1.The Union of India,
Rep. by its Secretary,
Ministry of Commerce,
Sastri Bhawan, New Delhi.

2.The Joint Director,
Director General of Foreign Trade,
4th & 5th Floor, Sastri Bhawan annexure,
Haddows Road,
Chennai-6.



W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018

M.DHANDAPANI,J.

WEB COPY

anu

3.Foreign Trade Development Officer,
O/o. The Additional Director General of Foreign Trade,
4th & 5th Floor, Sastri Bhawan annexure,
Haddows Road,
Chennai-6.

W.P.Nos.32552, 30626, 30629, 30631 and 30632 of 2018
and W.M.P.Nos.35717, 35708, 35716, 35720 and 37755 of 2018

16.03.2023