WEB COPY

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 28.10.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

**W.A.No.2310 of 2013**
**and**
**MP.No.1 of 2013**

1.The Director General of Foreign Trade,
Ministry of Commerce,
Udyog Bhavan,
New Delhi.

3.The Deputy Director General of Foreign Trade,
Ministry of Commerce,
Udyuog Bhavan,
New Delhi.

3.Foreign Trade Development Officer,
Ministry of Commerce,
Udyog Bhavan,
New Delhi. ... Appellants

Vs

1.M/s.Gayathri Stikers,
Rep. by its Proprietrix N.Varalakshmi
New No.72, Perumal Koil Street,
Tirupur [- 641 604.

2.The Commissioner of Customs (Sea Port)
Customs House, No.33, Rajaji Salai,
Chennai 600 001.

https://www.mhc.tn.gov.in/judis

WEB COPY



3.The Deputy Commissioner of Customs (Sea Port)
Customs House, No.60, Rajaji Salai,
Chennai 600 001. ... Respondents

**PRAYER:** Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 30.10.2012 made in W.P.No.21948 of 2002 and allow the appeal by dismissing the writ petition.

For Appellants : Mr.K.Srinivasamurthy
Senior Panel Counsel

For Respondents : Mr.A.P.Srinivas (for R2 & R3)
Senior Standing Counsel

No Appearance (for R1)

**JUDGMENT**

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The present writ appeal has been filed by the Director General of Foreign Trade challenging an order dated 30.10.2012.

2.The prayer in the writ petition was for a writ of certiorari challenging an order of the Foreign Trade Development Officer (FTDO) dated 22.04.2002. The petitioner was holding a licence bearing No.2133619 dated 28.11.1994 issued under the Export Promotion Capital Goods Scheme in terms of which it was permitted duty free imports upon condition of exports of a designated value. The petitioner had, against the aforesaid import

https://www.mhc.tn.gov.in/judis

WEB COPY



licence, imported various machineries and cleared the same claiming exemption of import duty.

3.The machineries were cleared by paying concessional duties on the assumption that the export target, as set out, would be achieved. However, admittedly, the petitioner had defaulted in achieving the export target and the bank guarantee executed by the petitioner was thus enforced.

4.The petitioner was issued a show cause notice calling upon it to remit the differential duty on the import of the machineries originally imported on concessional rate. Inter alia, there was also a stipulation for interest at the rate of 24%. The petitioner has remitted the duty in full and has challenged the show cause notice by way of the writ petition.

5.The first submission of the petitioner was that there was no stipulation under the Act for demand of interest. Reference has also been made to a Notification issued by the Central Board of Excise and Customs in No.160/92 dated 20.04.1992 that contains no stipulation for duty therein. In fact, and on the contrary, the petitioner would contend that since the bank guarantee was in force and the amount realised in full, it is the Customs Department that is liable to refund a small sum to the petitioner.

6.The response of the respondent turns on the admitted position of default in fulfilling the export obligation. It is hence that the demand of

https://www.mhc.tn.gov.in/judis

WEB COPY



differential duty was raised, and the writ petitioner has acquiesced with the demand, settling the same in full.

7.In the counter filed by the Customs Department, they rely upon Circular No.131/95-CUS, dated 20.12.1995, which refers to the levy of interest in the event of non-fulfilment of export conditions by the petitioner. The writ petition has ultimately come to be allowed referring to orders passed by the writ Court in other cases to the effect that there could be no levy of interest where there is no stipulation for the same either under the relevant Notification or under the Customs Act.

8.Heard learned counsel. Turning to the Bond executed *inter se* the parties, we find therein, reference to the levy of interest at the rate of 20% in the event of default in meeting the licence obligations/conditions. The Bond, dated 06.12.1994, contains a clause reading as follows:

> *'.........that in the event of his default in meeting the aforesaid obligations/conditions, he shall pay an amount equal to 24% interest per annum on the amount of duty saved from the date of import of the first consignment till the date of payment to the Government modifying the Scheme from time to time .....'*

9.The binding in nature of the clauses under the Bond has come up for consideration in matters both before the Supreme Court in *Rexnord Electronics and Controls Limited v. Union of India and others* [(2008) 12

https://www.mhc.tn.gov.in/judis

WEB COPY

SCC 156] as well as this Court. The Supreme Court, considering an identical question as arising in this matter, has crystallised the issue, as to whether the term '*interest*' will include within its fold interest payable under the bond furnished by the appellant before the DGFT at paragraph 16 of that judgment. In that case as well, there was a levy of interest for default of licence conditions. The issue was decided in favour of the revenue and against the assessee.

10.The Supreme Court categorically held that evasion of duty is bound to result in payment not only of the duty, but also interest in terms of the Bond executed by the parties. This Court, in the case of *M/s.FAL Industries Limited v. Directorate General of Foreign Trade and others* (WP.No.44020 of 2002 dated 21.08.2013) has decided the identical issue in line with the above judgment and the decision in *M/s.FAL Industries Limited* has been affirmed in W.A.No.296 of 2015 by an order dated 12.03.2024 in favour of the Director General of Foreign Trade.

11.In light of the aforesaid, we see nothing untoward in either the demand for interest or in the proposal under impugned communication dated 22.04.2002 for penal action under the provisions of Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, in the event of failure to remit interest within 30 days from the date of issue of that order.

12.In light of the discussion as aforesaid, we decline to interfere in the

https://www.mhc.tn.gov.in/judis

WEB COPY

impugned show cause notice dated 22.04.2002. The order of the writ Court dated 30.10.2012 is reversed and this writ appeal is allowed. No costs. Connected miscellaneous petition is closed.

**(A.S.M.,J) (G.A.M.,J)**
**28.10.2024**

Index: Yes
Speaking Order
Neutral Citation : Yes
vs

To

1.The Commissioner of Customs (Sea Port)
Customs House, No.33, Rajaji Salai,
Chennai 600 001.

2.The Deputy Commissioner of Customs (Sea Port)
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

https://www.mhc.tn.gov.in/judis

WEB COPY



**Dr.ANITA SUMANTH,J**
**AND**
**G.ARUL MURUGAN,J.**

vs

**W.A.No.2310 of 2013**

**28.10.2024**