



W.P.No.2991 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.2991 of 2021 and
W.M.P.Nos.3355 & 3356 of 2021

M/s. Precision Equipments (Chennai) Pvt. Ltd.,
Represented by its Managing Director,
P.K.Easwaramurthy,
Plot No.B-70(1) SIPCOT Industrial Park,
Irungattukottai, Kanchipuram District,
Tamil Nadu-602 105.

... Petitioner

-VS-

1. Commissioner of Customs (EODC-DEEC),
Ministry of Finance, Department of Revenue,
Office of Commissioner of Customs,
Chennai-IV, 60, Rajaji Salai,
Custom House, Chennai-600 001.

2.The Additional Director General of Foreign Trade,
4th and 5th floor, Shastri Bhavan Annex Building,
No.26, Haddows Road, Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent department relating to issuance of the order-in-original



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No.74231/2020 dated 28.02.2020 in reference number F.No.S45/242/2015-
DEEC-EODC-CH-IV and quash the same.

For Petitioner : Mr.Vasa Lohith Kumar
For R1 : Mr.K.S.Ramasamy, standing counsel
For R2 : Mr.S.Diwakar, SPC

ORDER

The petitioner assails an order-in-original dated 28.02.2020.

2.The petitioner is engaged *inter alia* in export of goods. In relation thereto, the petitioner had applied for and obtained an advance authorisation. Such advance authorisation was issued in favour of the petitioner on 13.01.2015 subject to the condition that the petitioner would fulfil the export obligations as per the Advance Authorisation Scheme. The petitioner also executed a bond for a sum of Rs.1,08,78,000/- with regard to fulfilment of such export obligations. Upon receipt of a show cause notice dated 06.02.2019, the petitioner submitted a representation to the 2nd



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respondent and requested for the redemption certificate. While the petitioner was awaiting such redemption certificate, it is stated that a second show cause notice dated 06.11.2019 was issued. Although the petitioner produced the communication to the 2nd respondent requesting for the redemption certificate, it is stated that the 1st respondent issued the order impugned herein by which it was concluded that the petitioner is liable to pay a sum of Rs.93,48,178/- along with interest thereon. In addition, by such order, goods valued at Rs.2,98,61,214/- were confiscated, subject to payment of redemption fine of Rs.10,00,000/-, and penalty of Rs.5,00,000/- was imposed. The writ petition was filed in the above facts and circumstances.

3. Learned counsel for the petitioner invited my attention to the letter dated 18.02.2019 from the petitioner to the Additional Director General of Foreign Trade requesting the said authority to issue the redemption certificate at an early date. He also pointed out that such redemption letter was eventually issued on 18.11.2020, but that the impugned order was issued in the meantime. Since the petitioner fulfilled the export obligations in full and obtained a redemption certificate to that effect, learned counsel



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submits that the petitioner should be provided an opportunity to place the redemption certificate before the 1st respondent. He also points out that principles of natural justice were breached in as much as the 1st respondent proceeded to issue the order in spite of the petitioner pointing out that the request for redemption certificate was pending with the 1st respondent. In support of the contention that interference by the writ court is warranted in the circumstances, learned counsel relies upon the judgment of the Division Bench in *M/s.Ramsays Corporation Private Limited v. The Commissioner of Customs, 2022 (381) E.L.T. 372 (Madras) (Ramsays Corporation)*, particularly paragraph 6 thereof.

4. These contentions were countered by learned counsel for the 1st respondent. Learned counsel submits that the petitioner applied for and obtained an advance authorisation on condition that export obligations are fulfilled within the specified period, and that corroborative evidence in the form of a redemption certificate is submitted in time. Since the petitioner was unable to provide evidence of having fulfilled the export obligation, learned counsel submits that the 1st respondent had no option but to issue



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the order impugned herein. He also submits that the petitioner had a statutory remedy against the impugned order and that the facts and circumstances do not justify the exercise of jurisdiction under Article 226 of the Constitution of India.

5. In support of these submissions, he relies upon the order passed by this Court on 09.06.2021 in *W.P.No.12498 of 2021, M/s.Fuso Glass India Private Limited v. The Assistant Director General of Foreign Trade and another (Fuso Glass)*, particularly paragraphs 9 to 12 thereof. In this regard, he submits that the fact situation was nearly identical in that case.

6. Learned counsel for the 2nd respondent submits that he has nothing to add to the documents already placed on record by the petitioner, including the redemption letter issued on 18.11.2020.

7. In order to substantiate the contention that the export obligation was fulfilled, the petitioner has placed on record redemption letter dated 18.11.2020. The said letter, in relevant part, reads as under:



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“This REDEMPTION Sheet is issued against the Authorisation No:0410160020 Dated:13.01.2015 issued by this office. The Custom Authorities and Licencee are requested not to make any endorsement on this Sheet.

The FOB Value of Licence fixed/realised to be read as Rs.59,452,992.97/36,518,200.76 and Foreign Currency as 946,703.69/581,500.00 (US Dollars)

The CIF Value of Licence Issued/Utilised to be read as Rs.37,326,945.29/29,565,558.89 and Foreign Currency as 584,603.69/470,789.15 (US Dollars)

Export Obligation met in full value as well as in quantity term, in proportion to import made. Consequently, the case has been redeemed in terms of Para 4.26/4.28 of HBP 2004-2009/Para 4.26/4.28 of HBP 2009-2014/Para 4.47/4.49 of HBP 2015-2020.

This EO Discharge/Redemption Certificate is issued without prejudice and will not preclude Custom Authority to take action against the licensee at any stage, in case any sort of misdeclaration, misrepresentation or misuse of the scheme is noticed.”



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From the above letter, it is evident that the export obligation was met in full by the petitioner both with regard to value and quantity. This letter was issued after the order impugned herein was issued.

8. The question that arises for consideration is whether discretionary jurisdiction should be exercised in light of the redemption letter. Learned counsel for the 1st respondent submitted that the petitioner should have filed an appeal by relying on the earlier order of this Court in *Fuso Glass*. While he contends that the fact situation in *Fuso Glass* was nearly identical, it is noticeable from the said order that the Additional Director General of Foreign Trade had not issued a certificate with regard to fulfilment of export obligation in that case, and the petitioner therein was awaiting such certificate. Learned counsel for the petitioner, on the other hand, placed reliance on the judgment of the Division Bench in *Ramsays Corporation*. In that case, the appellant had discharged export obligations and produced a redemption certificate as evidence thereof. In those circumstances, the Division Bench held as under in paragraphs 6 and 7:



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*“6. There can be no dispute about the fact that, the Appellant had discharged their Export Obligation, as would be evident from the Redemption Certificate issued on 27.10.2021. The production of Export Obligation Discharge Certificate (EODC) in terms of EPCG scheme is necessary for the importers to claim benefit under the said Scheme and delay in producing the Export Obligation Discharge Certificate (EODC) cannot result in denial of the benefit, more so, when the assessee/importer has admittedly discharged the Export Obligation and has also furnished the requisite documents before the appropriate authority for issuance of Export Obligation Discharge Certificate (EODC). A condition which is dependent on action by public authorities over which an assessee/importer has no control and, delay on the part of a public authority cannot result in denial of the benefit extended in larger public interest. Thus, the delay in obtaining Export Obligation Discharge Certificate (EODC) cannot result in denial of benefit under the EPCG Scheme, which itself has been formulated to promote export and earn foreign exchange. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Customs (Imports) v. Tullow India***



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Operations Ltd., reported in (2005) 13 SCC 789, relevant portion of which, is extracted hereunder:

"21. Both the importers are licensees. Indisputably, they were entitled to the benefit of the exemption notification subject, of course, to the condition that they would produce the essentiality certificate granted by the Directorate General of Hydrocarbons at the time of importation of goods. Grant of essentiality certificate was not in the hands of the assesseees. It was the function of a department of the Central Government. The essentiality certificate admittedly was not granted by the Directorate General of Hydrocarbons within a reasonable time. The importers could not be blamed therefor. It is possible that delay in granting the said essentiality certificate was by way of default on the part of the authorities concerned.

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26. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas of the Government of India. The functions performed by it are public functions. The notification never



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contemplated that a public functionary, having regard to the importance of the subject-matter and in particular when such importations are being made in public interest, would not dispose of the application for grant of essentiality certificate within a reasonable time so as to enable the importer to avail the benefit thereof. Applicants for grant of such certificates, having regard to their importance, should have been processed by the Directorate General of Hydrocarbons as expeditiously as possible but they did not choose to do so probably having regard to the fact that no time schedule therefor was prescribed. It is trite that when a public functionary is required to discharge its public functions within a time specified therefor, the same would be construed to be directory in nature. (See P.T. Rajan v. T.P.M. Sahir [(2003) 8 SCC 498] and Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC 776] .)"

*7. The above judgment has also been followed in the case of **O.N.G.C. Limited vs. Commissioner of Customs, Mumbai** reported in (2006) 7 SCC 403. Importantly, the above principle was also applied by the*



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*Hon'ble Supreme Court while construing an Exemption Notification in the case of **Mangalore Chemicals** reported in (1992) Supp 1 SCC 21, which stands approved by the decision of the Constitution Bench of the Hon'ble Supreme Court in **Dilip Kumar** case reported in (2018) 9 SCC 1.”*

Both in the case at hand and in the case dealt with by the Division Bench, the discharge certificate was issued after the impugned order was issued. Thus, the principle laid down by the Division Bench of this Court is squarely applicable to this case.

9. At the end of the day, an exporter was required to fulfil export obligations as a condition for the grant of advance authorisation. The documents on record include the redemption letter, and such redemption letter shows that the export obligation was fulfilled in entirety. In those circumstances, the petitioner must be provided an opportunity to place relevant documents before the 1st respondent. Therefore, the impugned order calls for interference.



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10. Hence, the impugned order is quashed and the matter is remanded to the 1st respondent for reconsideration. The petitioner is permitted to place all relevant documents before the 1st respondent. Upon consideration thereof, the 1st respondent is directed to issue a fresh order within a period of three months from the date of receipt of a copy of this order after providing a reasonable opportunity to the petitioner.

11. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To
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1. Commissioner of Customs (EODC-DEEC),
Ministry of Finance, Department of Revenue,
Office of Commissioner of Customs,
Chennai-IV, 60, Rajaji Salai,
Custom House, Chennai-600 001.

2. The Additional Director General of Foreign Trade,
4th and 5th floor, Shastri Bhavan Annex Building,
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SENTHILKUMAR RAMAMOORTHY,J.

Kj

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