IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.2529, 2533, 2534 & 2536 of 2020
and
W.M.P.Nos.2942 & 2947 of 2020

Schaeffler India Limited,
Represented by its Managing Taxation,
Mr.P.Sundarrajan,
having his Office at Survey No.950,
Rayakottah Road, Hosur,
Tamil Nadu, Pin – 635 109. ... Petitioner in 4WPs

Vs.

1.The Union of India
Represented by Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110001.

2.The Union of India,
Represented by Secretary to Government,
Ministry of Commerce, Udyog Bhavan,
New Delhi 110 001.

3.The Directorate General of Foreign Trade,
Ministry of Commerce & Industry,
Udyog Bhavan,
New Delhi 110 001.

4.The Deputy Director General of Foreign Trade,
Ministry of Commerce & Industry,
Shastri Bhawan, Haddows Road,
Chennai – 600 006.

5.The Commissioner of Customs,
Export Promotion Capital Goods,
Customs House, No.60,
Rajaji Salai, Chennai – 600 001. ... Respondents in 4WPs

Prayer in WP.No.2529 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in File No.04/21/021/00579/AM05 issued by the 4th respondent comprising of the impugned order in original dated 19.12.2019 and quash the same as illegal and arbitrary.

Prayer in WP.No.2533 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in File No.04/21/021/00181/AM06 issued by the 4th respondent comprising of the impugned order in original dated 30.04.2019 and quash the same as ex-facie without jurisdiction.

Prayer in WP.No.2534 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 4th respondent not to treat the Petitioner and its Directors as defaulters and withhold issuance of further licenses / authorisation / export incentives, etc for alleged non-fulfilment of export obligation by Luk India Private Limited.

Prayer in WP.No.2536 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in File No.04/21/021/00181/AM06 issued by the 4th respondent comprising of the impugned order in original dated 17.12.2019 and quash the same as illegal and arbitrary.

For Petitioner	: Mr.Prakash Shah For Ms.Jayalakshmi Ms.Jas Sanghavi Mr.Alekshendra Sharma (in 4WPs)
For Respondents	: Mr.R.P.Pragadish Central Govt. Standing Counsel (in 4WPs)

COMMON ORDER

The Order-In-Original passed by Deputy Director General of Foreign Trade dated 19.12.2019 and 17.12.2019 and show cause notice dated 30.04.2019 are under challenge in these writ petitions.

2. The petitioner is the Company registered under the provisions of the Companies Act.

3. It is not in dispute that the petitioner / M/s.Luk India Private Limited had been granted an EPCG Licence / Authorisation dated 12.05.2005 for a total duty saved value of Rs.2,07,434/- under 5% concessional duty EPCG Scheme for import of capital goods listed with the said licence / authorisation, with an obligation to export "Clutch Products" manufactured out of the imported capital goods. For the purpose of discharge of said export obligation, M/s.Luk India Private Limited, Tamil Nadu were required to submit the export documents under ANF-5B, as per Para-5.13 of Hand Book of Procedures, 2004-2009 as amended within a period of three months from the date of expiry of the block periods. Further the Company is required to submit the Installation Certificate issued by the Central Excise Authority of Chartered Engineer as the case may be, within a period of six months from the date of import to the Regional Authority/Licensing Authority concerned, as per Para-5.3.1 of Hand Book of Procedures, 2004-2009 as amended. However, M/s.Luk India Private Limited, Tamil Nadu had submitted the export documents under ANF-5B vide their letter dated 26.03.2014, on scrutiny of which the following defects were noticed by the competent authorities.

4. Mr.Prakash Shah, learned Senior Advocate appearing on behalf of the petitioner / Company would submit that the petitioner Company had produced all the relevant documents to the authorities, despite that the findings were made in the impugned order, which all are incorrect. The findings in the impugned order reveal that the total export obligation period had been expired on 11.05.2013 i.e. prior to more than six years and since M/s.Luk India Private Limited, Tamil Nadu could not submit the complete documents towards the payment of duty saved value utilised by them, interest thereon. The findings in the order impugned also reveals that the Company had failed to submit the complete export documents under ANF-5B or regularise the issues by paying the entire duty saved value utilised along with the interest thereon to the Customs Authority at Port Registration and produced complete documentary evidence towards payment of duty saved value utilised and interest thereon as per Para-5.14 of Hand Book of Procedures, 2004-2009, even after a period of more than six years from the date of export obligation period.

5. Perusal of the facts and the arguments advanced on behalf of the petitioner would reveal that certain discrepancies were identified by the

competent authorities and the petitioner claims that all the exports documents were filed in accordance with the procedure. However, the authorities made a finding that incomplete documents were filed and therefore, it was not clear. Thus, there is no ambiguity that the disputed facts between the parties exit in the present case.

6. High Court cannot adjudicate the disputed facts between the parties in a writ proceeding under Article 226 of the Constitution of India. The scheme of the statute provides appeal for application of such original issues with reference to the documents and evidence available. Therefore, exhausting appellate and review remedy are paramount important in the present case. The person aggrieved need not be deprived of exhausting the appellate remedy contemplated under the Act, which is efficacious.

7. The power of judicial review of the High Court under Article 226 is to ensure the processes through which a decision has been taken by the competent authorities in consonance with the Statute and Rules in force, but not the decision itself. Therefore, the factual findings and the issues dealt with by the authorities with reference to the documents and evidences are of greater assistance to the High Court, while exercising the power of judicial

review.

8. In the present case, there are disputed issues between the parties. On the one hand, the petitioner had stated that the petitioner submitted all the relevant export documents as per the procedures. The respondents denied the same by stating that the documents submitted by the petitioners were incomplete and therefore, the authorities have not cleared the same.

9. That being so, the petitioners are at liberty to prefer an appeal to the Additional Director General of Foreign Trade, Chennai. The Order-In-Original impugned would indicate that the appeal is to be filed within 45 days. Since the writ petitions are pending before this Court, the petitioner is at liberty to submit an appeal before the Appellate Authority within a period of 15 days from the date of receipt of a copy of this order. On receipt of any such appeal, the Appellate Authority shall conduct an enquiry by following the procedures as contemplated and by affording opportunity to the petitioner and decide the same on merits and in accordance with law as expeditiously as possible.

10. The learned counsel for the petitioner would submit that an interim

stay was granted in W.P.Nos.2529 and 2533 of 2020 on condition to deposit of a sum of Rs.2,00,000/-. The said amount had been deposited in the High Court.

11. Thus, the Registrar General, High Court is directed to refund the deposited amount to the petitioner within a period of one week from today. A copy of this order is directed to be communicated to the Registrar General to refund the deposited amount to the petitioner in credit of the present writ petitions along with the interest, if any.

12. With the above directions, the Writ Petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

29.01.2024

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order

To

1.The Union of India
Represented by Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110001.

2.The Union of India,
Represented by Secretary to Government,
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6.The Registrar General,
Madras High Court,
Chennai – 600 104.

S.M.SUBRAMANIAM, J.

Jeni

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