IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.19197 & 19199 of 2020
and W.M.P.Nos.23784 & 23786 of 2020

Sri Balaji Valves Pvt. Ltd.,
Rep. by its Director
Abarajitha Manoharan,
No.39-C, MGR Salai,
Palavakkam,
Chennai – 600 041. ...Petitioner in both W.Ps.

-Vs -

1. The Director General of Foreign Trade,
Ministry of Commerce & Industry,
Directorate General of Foreign Trade,
Udyog Bhawan, New Delhi – 110 011.

2. The Joint Director General of Foreign Trade,
5th Floor, Shastri Bhavan Annex,
No.26, Haddows Road,
Chennai – 600 006 ... Respondents in both W.Ps.

Prayer in W.P.No.19197 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order dated 18.09.2020 issued in F.No.18/95/2018-19/ECA/1(E)/144 passed by the first respondent confirming the order No.04/81/040/00019/AM02 dated 04.08.2011 of the second respondent and quash the same.

<u>Prayer in W.P.No.19199 of 2020:</u> Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order dated 18.09.2020 issued in F.No.18/95/2018-19/ECA/1(E) passed by the first respondent confirming the order No.04/21/040/00180/AM01 dated 01.10.2012 of the second respondent and quash the same.

<u>In both WPs.</u>

For Petitioner : Mrs.S.Yogalakshmi
For Hari Radhakrishnan

For Respondents : Mr.S.Diwakar
Special Panel Counsel.

<u>COMMON ORDER</u>

These writ petitions have been filed challenging the orders passed by the first respondent, thereby dismissing the appeal filed by the petitioner by confirming the orders passed by the second respondent, thereby imposing penalty.

2. The petitioner is one and the same in both writ petitions. The petitioner applied for grant of advance licence, and he was alloted in

pursuance of two sets of the exports. As per the grant of advance licence, the petitioner is entitled to import certain inputs without payment of duty but has a corresponding obligation to export goods. Accordingly, the petitioner had fulfilled the exports obligation by exporting goods as per the advance licence. The exports had dwindled and losses had multiplied as such the petitioner company was suffering a lot. That apart, the Managing Director of the petitioner company had passed away. Therefore, the legal heirs of the Managing Director had looked into the business and thereafter the petitioner company was forced to suspend his operations, due to lack of orders. The petitioner company was constrained to lay-off several of its workmen and the entire factory itself closed. Therefore, the petitioner could not submit the documents to evidence fulfillment of export obligation. In the mean time, the second respondent passed orders dated 04.08.2011 & 01.10.2012, thereby imposed penalty on the petitioner under Section 11(2) of Chapter IV of the Foreign Trade (Development & Regulation) Act, 1992, on the ground that the petitioner did not fulfill the export obligations.

3. The learned counsel appearing for the petitioner submitted that the second respondent issued show cause notice and the personal hearing was given. The Director of the petitioner company attended the hearing and made submissions. However, without considering the submission, the second respondent imposed penalty for non fulfillment of export obligation. That apart, the demand of the respondents was made after the period of ten years of the utilization of the advance licence. The company itself ceased operations and as such, after the period of ten years, the demand made by the second respondent cannot be sustained.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. On perusal of the records revealed that the petitioner obtained advance licence for import of items duty free as specified in the licence with an obligation to export the resultant export product within a period of eighteen months from the date of issuance of licence. The petitioner firm has not fulfilled the export obligation as such the petitioner was served with show cause notice. Whereas specified period

has elapsed after being declared as defaulter, the petitioner firm did not submit any document of exports or imports containing shipping bills, BRCs, copies of invoices, bills of entry, statement of imports & exports and original licence.

6. As per the terms and conditions of the licence, the licence shall deliver or cause to be delivered to the second respondent's office within a period of 30 days from the date of expiry of the export obligation period. Further, the licence holder shall send quarterly report to the concerned authority giving details of import made against the licence goods manufactured and the goods exported in discharge of the export obligation on the licence.

7. Admittedly, the licence period of eighteen months had expired on 11.09.2002 and 21.01.2002 respectively in respect of two advance licence. Therefore, the petitioner was served with show cause notice, thereby directing the petitioner to submit export documents or the licensing authority shall enforce the bank guarantee and declare the firm as defaulter along with the suspension of the licence holder's importer

exporter code. However, there was no response and the second respondent passed order declaring the petitioner as defaulter for not having submitted export obligation discharge documents in both licence.

8. Further, the second show cause notice was also served on the petitioner thereby directing the petitioner to submit relevant export obligation discharge documents or surrender the licence and regularize the same by paying the customs duty saved valued with interest thereon. However, there was no response and as such the second respondent passed order thereby imposed penalty on the petitioner. After imposing penalty, on 07.01.2013, the petitioner was served with show cause notice, directing the petitioner to comply the order passed by the second respondent, failing which recovery proceedings will be initiated under the Revenue Recovery Act. Thereafter, the petitioner filed review before the first respondent as contemplated under Section 16 of the Foreign Trade (Development & Regulation) Act and the same was also dismissed. This Court finds no infirmity or illegality in the order passed by the respondents and both the writ petitions are devoid of merits and liable to be dismissed

9. Accordingly, both the Writ Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

10.04.2024
(½)

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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To

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G.K.ILANTHIRAIYAN. J,

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