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W.P.No.22703 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.22703 of 2021
and
W.M.P. No. 23933 of 2021

M/s. Integrated CNC Technologies Pvt. Ltd.,
Represented by its Director,
Geetha Rani,
No. 230, North Phase, SIDCO Industrial Estate,
Chennai – 600 098.

Presently at
Plot No. 15, Sector-1,
1st Street, SIDCO Industrial Estate (North),
Ambattur, Chennai – 600 098.

... Petitioner

Vs

The Deputy Director General of Foreign Trade,
O/o. The Additional Director General of foreign Trade,
Shastri Bhawan,
Haddows Road,
Chennai – 600 006.

... Respondent

Writ Petition is 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-in-Original dated 24.08.2021 issued in F.No.



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04/21/021/01037/AM08 by the respondent and quash the same.

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For Petitioner : Mr. Hari Radhakrishnan

For Respondent : Mr. T.V.Krishnamachari,
Senior Panel Counsel

O R D E R

This Writ Petition has been filed challenging the order dated 24.08.2021 passed by the respondent, imposing penalty of Rs.50,00,000/- for non-fulfilment of the export obligation.

2. The petitioner is engaged in the business of manufacture of machined parts for automobile and other engineering industries. The petitioner had obtained two Export Promotion Capital Goods (EPCG) authorizations. The said authorizations were obtained for import of capital goods under concessional duty EPCG scheme and the petitioner had a corresponding export obligation to export 'precision components for automobile industries'. Further, in respect of the EPCG authorizations, the export obligation was fixed at USD 217,461.36 and in respect of EPCG licence dated 27.06.2008, the export obligation was fixed at USD 148,200



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and the same had to be fulfilled within a period of eight years.

3. Though the petitioner had fulfilled the export obligation in respect of both EPCG authorizations, but failed to submit the documents evidencing fulfilment of export obligation to the Licensing Authority. Therefore, the petitioner was served with show cause notice dated 30.05.2019 in respect of EPCG authorization. On receipt of the same, the petitioner had replied, by reply dated 11.03.2020. However, no orders were passed in pursuance of receiving the reply from the petitioner. On 24.08.2021, the respondent passed the impugned order and imposed penalty of Rs.50,00,000/- on the ground of non-fulfilment of export obligation in respect of the first obtained EPCG authorization.

4. The specific case of the petitioner/Company is that they were not served with any show cause notice and no opportunity of personal hearing was also given before passing the impugned order.

5. From the impugned order passed by the respondent, it reveals

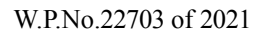


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that the show cause notices dated 02.07.2019 and 09.07.2019, issued to the petitioner, the respondent failed to produce any records to show that the petitioner was served with show cause notice and the petitioner failed to reply.

6. The learned Senior Panel Counsel appearing for the respondent submitted that there is an appeal remedy as against the impugned order passed by the respondent under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992, within a period of 45 days from the date of issuing of that order. Therefore, without exhausting the appeal remedy, this Writ Petition is not maintainable under Article 226 of the Constitution of India.

7. As repeatedly held by the Hon'ble Supreme Court of India and this Court in various decisions, the appeal remedy is not a complete bar for entertaining Writ Petition under Article 226 of the Constitution of India, when there is violation of principles of natural justice. Therefore, the Writ Petition is very much maintainable, since the petitioner was not served with



8. In view of the above, the impugned order dated 24.08.2021 is quashed. The respondent is directed to issue fresh show cause notice, giving an opportunity of personal hearing to the petitioner and pass orders for violation of the petitioner for non fulfilment of export orders, on merits and in accordance with law, within a period of twelve months from the date of receipt of a copy of this order.

24.06.2024

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To

The Deputy Director General of Foreign Trade,
O/o. The Additional Director General of foreign Trade,
Shastri Bhawan,
Haddows Road,
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G.K.ILANTHIRAIYAN, J.

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