



W.P.No.430 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2023

PRONOUNCED ON : 19.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.430 of 2020
and WMP.Nos.456, 491 of 2020
& 15302 & 15304 of 2022

Integra Garments & Textiles Ltd.,
Represented by its Director,
Mr.harshvandhan A.Piramal

... Petitioner

VS.

1.The Union of India,
Represented by Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 000.

2.The Directorate General of Foreign Trade,
Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhavan, New Delhi 110 011.

3.The Commissioner of Customs, EODC, (Chennai-IV)
Customs House, 60, Rajaji Salai,
Chennai 600 001.

.. Respondents



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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.S45/6083/2005-DEEC-EODC comprising of impugned Show Cause Notice dated 28.08.2019 issued by 3rd respondent and quash the same.

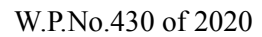
For Petitioner : Mr.Prakash Sha
Senior Counsel
For M/s.Jayalakshmi.P
M/s.Jas Sanghavi &
M/s.Alekshedra Sharma

For R1 & R3 : Mr.Rajnish Pathiyil
Senior Panel Counsel

For R2 : Mr.T.L.Thirumalaisamy
Standing Counsel

ORDER

The petitioner has challenged the impugned show cause notice dated 28.08.2019 issued by the third respondent seeking to recover Customs duty on the imports made by the petitioner on the strength of advance license issued to the petitioner on 30.11.2005 in respect of the following four bills of entry:-



2. Arguing the case on behalf of the petitioner, the learned Senior Counsel for the petitioner would submit that the show cause notice issued in the name of M/s.Fabritex Exports Pvt Ltd which has ceased to exists long before on account of mergers and de-mergers.

3. In this connection, the learned Senior Counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the following cases:-

- i) **J.M.Baxi & Co. vs Commissioner of Customs, New Kandla, 2000(120)E.L.T.29 (S.C.)**
- ii) **Dharampal Lalchand Chug vs. Commissioner of C.Ex.Nashik, 2015(323)E.L.T.753 (Bom.,)**



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- iii) **Madina (UZ) Impex vs. Union of India**, 2019(368) E.L.T.555(Del.)
- iv) **Government of India vs. Citedal Fine Pharmaceuticals**, 1989(42)E.L.T.515(S.C.)
- v) ***Spice Entertainment Ltd Vs. Commissioner of Service Tax*** reported in 2012 (280) E.L.T 43(Del),
- vi) ***CIT New Delhi Vs. M/s.Spice Entertainment Ltd*** in Civil Appeal No.285 of 2014,
- vii) ***Pr.Commissioner of Income Tax -6 Vs. Maruti Suzuki India Limited*** reported in 2018 SCC Online Del 13332 (Delhi HC) and
- viii) ***Pr.Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited*** reported in 2019 SCC Online SC 928.
- ix) **Alamelu Veerappan vs. Income Tax Officer, Non-Corporate Ward-2(2), Chennai**,(2018)95 taxmann.com 155(Madras)
- x) **Shabina Abraham vs. Collector of Central Excise and Customs**, 2015(322) E.L.T.372(S.C.)
- xi) **Godrej & Boyce Mfg.Co.,Ltd., vs. Union of India (Through the Secretary) Ministry of Law and Justice, Commissioner of CGST Navi Mumbai Commissionerate, Joint Commissioner of CGSG Navi Mumbai Commissionerate**, 2022(9)TMI 318 .



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4. It is submitted that the impugned show cause notice by the third respondent issued in the name of M/s.Fabritex Exports Pvt.Ltd., the company which has ceased to exist is liable therefore to be quashed.

5. The learned Standing Counsel for the second respondent would submit that till date IE code of the said M/s.Fabritex Exports Pvt Ltd has not been cancelled and continues to remain and therefore it is not open for the petitioner to state that the impugned show cause notice has been issued to a company which has ceased to exist on account of mergers and de-mergers.

6. In this connection, a reference is made to Para 4 of the counter affidavit of the first and second respondents, which reads as under:

“4.As regards Para No.1 of the affidavit, it is submitted that as per the provision of HBP (Hand Book of Procedures)/FTP (Foreign Trade Policy), every exporter/importer need to obtain the Import Export Code from DGFT (Director General of Foreign Trade). On obtaining the IE Code, one can start the business of foreign trade. Accordingly, M/s.Fibritex Exports Pvt Ltd obtained the IE Code No.0793017980. On obtaining the IE code, if any change in constitution of the company, it is the responsibility of the exporter to update the IE code by informing to DGFT by providing the proof of



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change in the constitution of the company. Whereas till today, the IEC is not modified and stands in the name of M/s. Fibritex Exports Pvt Ltd. As per the IEC data of DGFT, the 2nd petitioner name is not appearing as Director of the Company or change in the name of the company. Therefore the writ petition filed by M/s.Integra Garments & Textiles Ltd., needs to be dismissed as the Authorisation is to M/s. Fibritex Exports Pvt Ltd ”.

7. That apart, the learned Standing Counsel for the second respondent would draw attention to the communications sent M/s.Fabritex Exports Pvt Ltd., on 13.08.2007, 21.01.2008 and 28.01.2008.

8. It is submitted that the said company had informed that there is a genuine difficulty and that they have undertaken to pay balance of the tax after remitting a sum of **Rs.13,35,036/-**.

9. Defending the impugned order, the learned Senior Panel Counsel for the first and third respondents would submit that the writ petition is liable to be dismissed, as it is pre-mature. It is submitted that it is for the petitioner to reply to the impugned show cause notice.



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10. That apart, it is submitted that the issue is no longer *res integra* and has been answered by the Division Bench of this Court rendered in the context of Section 28 of the Customs Act in the case of ***Varalakshmi Exports Vs. CESTAT, Chennai*** reported in 2021 (376) E.L.T.463 (Mad). A reference is made to Paragraph 18, 19 and 20, which reads as under:-

18.The demand of duty for violating the post importation condition of an exemption notification is not confined to any period of limitation and hence there is no relevancy in the argument of the Appellants that they did not suppress any material facts. Just because the Tribunal has wrongly interpreted the order passed in the Bombay Hospital Trust case or the Revenue was indifferent to such wrong interpretation and the resultant effect, this Court cannot make an unnecessary exercise by analyzing the fact whether or not there was or any suppression of facts in the context of Section 28(4). Section 28(4) refers only about those cases for which limitation is applicable but because of certain aggravating circumstances like suppression of facts, the limitation gets extended to 5 years.

19.Even if the point on suppression of fact is analysed for the sake of completion, the records would show that the First Appellant had sold the Mulberry Raw Silk imported on Exemption Certificate, in the local market through the second and third appellants. After inspection the First Appellant remitted Rs.17,00,000/- under challan dated 03.02.1999 and



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17.02.1999 towards the appropriation of the duty liability. Knowing fully well about the export obligations on Exemption Certificate and having violated it, the First Appellant had sold them in the local market through the Appellants 2 and 3. The mere delay on the part of the Authorities of detect the violation of export obligation and issue show cause cannot be construed as a permissive violation. The suppression of facts and materials is very much visible from the conduct and te pattern in which the Appellants cause the disappearance of the raw materials.

20.Had the Tribunal rightly interpreted the dictum laid down in Bombay Hospital Trust Case on the point of limitation for cases falling under post import obligations, it would not have occasioned the Appellants to make a claim on the point of limitation by referring to Section 28(4) of the Act. Hence the claim of the appellants on the point of limitation does not deserve merit. Since there is no period of limitation for violations of post import obligations, hence, the question of law 1 and 2 are answered against the appellants.

11.That apart, the learned Senior Panel Counsel for the first and third respondent has placed reliance on the Circular No.F.No.387/39/99-JC issued by the Central Board of Indirect Taxes and Customs.



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12. The learned Standing Counsel for the second respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Mediwell Hospital & Healthcare Pvt Ltd*** reported in 1997 (89) E.L.T. 425 (S.C). He has also drawn attention to distinguish the decision of the Hon'ble Supreme Court in the case of ***Pr.Commissioner of Income Tax Vs. Maruti Suzuki India Limited*** reported in (2019) 107 taxmann.con 375 SC with a decision of this Court in the case of ***M/s.Mando Automotive India Private Limited, Represented by its Authorized Signatory, J.Sundararajan Vs. The Deputy Commissioner of Income-Tax, Corporate Circle 4 (1), 4th Floor, Main Building, 121, Mahatma Gandhi Road, Chennai – 600 034*** reported in 2021 SCC Online Mad 12514.

13. The learned Senior Counsel for the petitioner submits that M/s.Fabritex Exports Pvt.Ltd., had obtained Advance Authorization No.0710041662/30.11.2005 from ADGFT, Bangalore. The said Authorization was issued with a condition that the importer has to fulfill the export obligation as prescribed in the above said notification read with the conditions as prescribed in the Advance Authorization. The importer had also executed



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bond of Rs.1,25,00,000/- with an undertaking that they will fulfill the export obligation, failing which they will pay back the customs duties availed as exemption under Advance Authorization Scheme along with applicable interest.

14. Pursuant to the order passed by the High Court of Karnataka dated 11.12.2009, Fabritex Exports Pvt.Ltd., was merged with one M/s. Integra Apparels and Textiles Ltd. Thereafter, pursuant to the order passed by the Karnataka High Court dated 27.08.2010, Integra Apparels and Textiles Ltd was merged with M/s.Morarjee Textiles Ltd., Fabritex Export Pvt.Ltd., was issued the Advance Authorization using which in the month of December, 2005, the said Fabritex Export Pvt.Ltd., imported four consignment of materials and filed four Bills of Entry with Customs House, Chennai for the assessment of imported goods after which the Show Cause Notice dated 29.08.2019 was issued by the third respondent.

15. It is the contention of the respondents that the importer has failed to fulfill the export obligations and produce Export Obligation Discharge Certificates (EODC) within the prescribed time/extended time prescribed and



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thereby has violated the conditions of the notifications under which the goods were imported without payment of duty and also has violated the conditions of Advance Authorization read with the conditions of Bond executed by them.

16. The learned Senior Counsel further submits that the petitioner was called upon to show cause as to why the imported goods of total value of Rs.3,39,39,123/- under the authorization should not be confiscated and the customs duty of Rs.73,56,080/- should not be demanded for the non-fulfillment of export application.

17. The learned Senior Panel Counsel for the first and second respondents submits that as per the provisions of Hand Book of Procedures /FTP (Foreign Trade Policy) every exporter/importer need to obtain the Import Export Code from DGFT (Director General of Foreign Trade). On obtaining the IE Code, one can start the business of foreign trade. Accordingly, M/s.Fibritex Exports Pvt.Ltd., obtained the IE Code No.0793017980. On obtaining the IE Code, if any change in constitution of the company, it is the responsibility of the exporter to update the IE code by informing to DGFT by



providing the proof of change in the constitution of the company.

18. The learned Senior Panel Counsel for the first and second respondents further submits that as per the IEC data of DGFT, the second petitioner name is not appearing as Director of the Company or change in the name of the company. Therefore, the writ petition filed by M/s.Integra Garments & Textiles Ltd. It is submitted that the petitioners contention cannot be accepted as the Authorization holder i.e. M/s.Fibritex Exports Pvt.Ltd., have submitted the export documents for discharge of export obligation to the office of the Joint Director General of Foreign Trade on 13.08.2007. On examining of export documents for discharge of obligation, it was found that the firm had unutilized excess import to the extent of 729672 sq.mtrs. Therefore, they were asked to regularise the excess import by payment of duty plus interest on unutilized imported fabric by this office letter dated 21.01.2008.

19. The learned Senior Panel Counsel for the first and second respondent further submits that the contention of the petitioner cannot be accepted because the firm was given enough time to settle the issue on payment of duty plus



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interest on unutilized excess imports. But, however, the petitioner has not settled the issue as per the RLA's letter dated 21.01.2008 as assured by them. Therefore, the present writ petition is devoid on merits and is not maintainable and hence this Court may be pleased to direct the petitioner to pay the duty plus interest on unutilized imported material as informed to them by this office letter dated 21.01.2008.

20. I have considered the arguments advanced by the learned Senior counsel for the petitioner and the learned Senior Panel counsel for the first and third respondents and the learned Standing Counsel for the second respondent.

21. There is no merits in these writ petitions challenging the impugned show cause notice. Merely because, the noticee company has been merged with the petitioner company *ipso-facto* would not mean the liability of the noticee company would stand extinguished on account of its merger with the petitioner company.

22. Under the scheme of amalgamation sanctioned by the High Courts



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under the provisions of the Companies Act, 1956, as also under the scheme of amalgamation that are presently sanctioned by the National Company Law Tribunal (NCLT) under the provisions of the Companies Act, 2013, transferee company like the petitioner herein would not only have taken over the assets but also liability of the transferor like the noticee company.

23. In any event, the liability incurred by the noticee company which merged with the petitioner company cannot stand extinguished on account of its merger with the petitioner. Merger or amalgamation of the companies are intended to synergize the collective strengths of both the transferor or and transferee company with view to bring efficiency to inspire the confidence of investors and to increase profit to benefit the promoters and the shareholders.

24. Merger or amalgamation of companies is not a tool under law to either facilitate avoidance and evasion of tax liability already incurred by a transferor company like the Noticee. If the liabilities of the Noticee Company stood undischarged, the petitioner, as the successor of the business of the Noticee company and as the transferee company not only acquires the liabilities



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of the transferor company but also its assets, unless, the liability was retained by the promoters of the transferor company. The petitioner has not filed Scheme of Amalgamation before this Court. Therefore, Show Cause Notice proceeding cannot be scuttled.

25. Since, the benefit of advance license was availed by the Noticee (transferor) and it had filed to discharge its obligation under the advance license, the liability has to be discharged by the transferee company as its successor. As a transferee company, the petitioner cannot state that the liability of the noticee company stood extinguished on account of its merger /amalgamation with it.

26. The decisions cited by the learned Senior counsel for the petitioner cannot be applied to the facts of the case. This writ petition is therefore liable to be dismissed.

27. The petitioner is therefore directed to file a reply with the impugned Show Cause Notice within a period of 30 days from the date of receipt of a copy of this order.



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28. For the sake of clarity, a corrigendum may be issued to the impugned Show Cause Notice to the petitioner as a transferee company/successor of Noticee company namely M/s.Fabritex Exports Pvt.Ltd.

29. The respondents are directed to adjudicate the same and pass orders on merits within a period of three months thereafter. Needless to state that the petitioner shall be heard and entitled to file a written submission if any.

30. Entire exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

31. It is made clear that if the petitioner as the successor of the Notice company fails to co-operate with the respondents, the respondents are at liberty to confirm the demand proposed in the impugned show cause notice and recover the amount from the petitioner company based on the available material.



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32. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.02.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

- 1.The Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 000.
- 2.The Directorate General of Foreign Trade,
Ministry of Commerce & Industry,
Department of Commerce,
Udyog Bhavan, New Delhi 110 011.
- 3.The Commissioner of Customs, EODC, (Chennai-IV)
Customs House, 60, Rajaji Salai,
Chennai 600 001.



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C.SARAVANAN, J.

kkd

Pre-delivery Order in
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