BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	27.07.2023
Pronounced on	11.03.2024

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

Rev. Aplw(MD).No.67 of 2023
and
W.M.P.(MD).No.8381 of 2023

Madura Coats Pvt.Ltd.,
Represented by its Manager, Excise & Legal,
New Jail Road,
P.O.Box No.35,
Madurai – 625 001,
Tamil Nadu. ... Petitioner

Vs.

1. The Director General of Foreign Trade,
   Ministry of Commerce,
   Udgyog Bhavan,
   New Delhi – 110 001.

2. The Policy Relaxation Committee (PRC),
   O/o. Directorate General of Foreign Trade,
   Ministry of Commerce,
   Udyog Bhavan,
   New Delhi – 110 001.

3. The Joint Director of General of Foreign Trade,

Plot No.117, 1st Main Road,
K.K.Nagar,
Madurai – 625 020.

4. The Assistant Commissioner of Customs,
Office of the Assistant Commissioner of Customs,
No.166/2B, Harbour Express Bye Pass Road,
Tuticorin – 628 008. ... Respondents

Prayer: Review Application is filed under Order 47 Rules 1 and 2 read with Section 114 of C.P.C to review the order passed in W.P.(MD).No. 15613 of 2016 dated 19.09.2022 passed by this Court and decide the writ petition on merits.

For Petitioner	: Mr.T.Mohan Senior Counsel for Ms.D.Geetha
For Respondents	: Mr.A.R.L.Sundaresan Additional Solicitor General Assisted by Mr.K.Govindarajan Deputy Solicitor General

ORDER

The petitioner has filed this Review Application to review order dated 19.09.2022 in W.P.(MD).No.15613 of 2016 on the ground that there is an error apparent on the face of record.

2. The learned Senior Counsel for the petitioner submits that while concluding that the applications filed by the petitioner for revalidating

the Advance Authorizations were belated, the Court has not taken note of the amendments to the Foreign Trade Policy for the period 2009-2014 with effect from 27.08.2009 as amended by Public No. 45(RE-2008)/2004-2009, dated 07.07.2008.

3. Public Notice No.45(RE-2008)/2004-2009 dated 07.07.2008, reads as under:-

TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY
(PART-I, SECTION-I)
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF FOREIGN TRADE
PUBLIC NOTICE NO.45 (RE-2008)/2004-2009
NEW DELHI, DATED THE 7th JULY, 2008

In exercise of powers conferred under Paragraph 2.4 of the Foreign Trade Policy 2004-2009, the Director General of Foreign Trade hereby makes the following amendments in Handbook of Procedures, Vol.I:

1. Para 9.3 relating to 'applications received after expiry of prescribed date of receipt' shall be amended to read as under:-

“9.3 Wherever any application is received after expiry of last date for submission of such application, the application may be considered after imposing a late cut in the following manner:-

1	***Application received after the expiry of last date but within six months from the last date***	*2%*
2.	***Application received after six months from the prescribed date of submission but not later than one year from the prescribed date***	*5%*
3.	***Application received after twelve months from the prescribed date of submission but not later than two years from the prescribed date***	*10%*

This issue in Public interest.

4. It is submitted that if the above amendment to paragraph 9.3 of the Handbook of Procedures to Foreign Trade Policy was taken note of, the decision that the conclusion that was ultimately arrived in the rest of the paragraph from paragraph 159 and 160 would have been different. Hence, it is submitted there was an error apparent on the face of record which requires to be rectified and therefore order dated 19.02.2022 in W.P.(MD).No.15613 of 2016 has to be modified.

5. Defending the order dated 19.09.2022 in W.P.(MD).No.15613 of 2016, the learned Additional Solicitor General for the respondents would

submit that this Review Application is nothing but an appeal in disguise.

6. The learned Additional Solicitor General for the respondents has drawn attention to Ground No.11 to indicate that the petitioner is indeed seeking to argue an appeal before this Court although this applicant has been filed as a Review Application under Order 47 Rule 1 and 2 read with Section 114 of C.P.C.

7. Specifically, the learned Additional Solicitor General for the respondents has drawn attention to a recent decision of the Hon'ble Supreme Court in **S.Murali Sundaram** vs. **Jothibai Kannan and Others**, 2023 SCC OnLine SC 185, wherein the Hon'ble Supreme Court has reiterated its view taken earlier and has ultimately held as under:-

> *"18. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand, we are of the opinion that in the present case while allowing the review application and setting aside the judgment and order dated 03.03.2017 passed in Writ Petition No.8606 of 2010 the High Court has exceeded in its jurisdiction and has exercised the jurisdiction not vested in it while*

> *exercising the review jurisdiction under Order 47 Rule 1 read with Section 144 CPC. From the reasoning given by the High Court, it appears that according to the High Court the judgment and order passed in Writ Petition No.8606 of 2010 was erroneous. While passing the impugned judgment and order the High Court has observed and considered the Survey Report dated 12.12.2007 which was already dealt with by the High Court while deciding the main writ petition and the High Court discarded and/or not considered the Survey Report dated 12.12.2007. Once the Survey Report dated 12.12.2007 fell for consideration before the High Court while deciding the main writ petition thereafter the same could not have been considered again by the High Court while deciding the review application."*

8. Hence, the learned Additional Solicitor General for the respondents prays for dismissal of the Review Application. The respondents are directed to maintain *status quo* as on date till the date of disposal of the final application.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Solicitor General for the respondents.

10. The above amendment to the Hand Book of Procedures to Foreign Trade Policy has been taken note of and is captured in paragraph 145 of the order dated 19.09.2022 in W.P.(MD).No.15613 of 2016. In fact, paragraph 145 of the order dated 19.09.2022 also captures the subsequent amendment to Foreign Trade Policy.

11. Paragraph 145 to 147 of the order dated 19.09.2022 in W.P.(MD).No.15613 of 2016 reads as under:-

"145. Paragraph 9.3 of Hand Book of Procedures for 2004-09/2009-14 and 2015-20 read as follows:-

<table>
<tr><td colspan="4">Paragraph 9.3 of Hand Book of Procedures is similar to Paragraph 9.02 of the Hand Book of Procedure 2015-20</td></tr>
<tr><td colspan="4">Applications received after expiry of prescribed date of Receipt:</td></tr>
<tr><td>2004-09</td><td colspan="2">2009-2014</td><td>2015-2020</td></tr>
<tr><td>Wherever any application is received after expiry of the last date for submission of such application, but within 6 months from the last date, such application may be considered after imposing a late fee @ 10% on the entitlement.</td><td colspan="2">Wherever any application is received after expiry of last date for submission of such application, the application may be considered after imposing a late cut in the following manner:-</td><td>Whenever any application for any fiscal/financial benefits under FTP complete in all respects is received after expiry o last date for submission of such application, the application may be considered after imposing a late cut in the following manner:-</td></tr>
<tr><td></td><td>1</td><td>Application received after the expiry of last date but within 6 months from the last date.</td><td>2%</td></tr>
<tr><td></td><td>2</td><td>Application received after 6 months from the Prescribed date of submission but not later than One year from the prescribed date</td><td>5%</td></tr>
<tr><td></td><td>3</td><td>Application received after 12 months from the Prescribed date of submission but not later than 2 years from the prescribed date.</td><td>10%</td></tr>
</table>

146. Paragraph 9.13 of the HOP which states DGFT may, on his own or otherwise, call for records of any case pending with or decided by an officer subordinate to him or an officer of any EPC/FIEO including a Group/ Committee of officers nominated, appointed or authorised by him and pass such orders as he may deem fit is also not relevant. Claim for Exemption from the Policy / Procedure under 2.5 of 2009-14 Policy and later 2.58 of 2015-2020 is without merits.

147. The application was filed on 16.02.2011 for the first time after the extension of two years. Thus, the application was beyond the limitation. Paragraph 9.3 of the Foreign Trade Policy therefore cannot come to the rescue of the petitioner."

12. Time for discharging the export application has been discussed in paragraph 150, 151 & 152 of order dated 19.09.2022 in W.P.(MD).No. 15613 of 2016. They read as follows:-

"*150. Paragraph 4.22 Handbook of Procedure as it stood before and with effect from 27.08.2009 are reproduced below for a comparison*

Paragraph 4.22 Handbook of Procedure before 27.08.2009.	***Paragraph 4.22 Handbook of Procedure with effect 27.08.2009.***
Export Obligation Period (EO) and its Extension:	

The period of fulfillment of export obligation under an Advance Authorisation shall commence from the date of issuance of authorization. The export obligation shall be fulfilled within a period of 24 months except in the case of supplies to the projects/turnkey projects in India/abroad under deemed exports category where the export obligation must be fulfilled during the contracted duration of execution of the project/turnkey project. *In case of Spices (covered by Chapter 9 of the ITC (HS) Classifications of Export and Import Items, 2004-09), the export obligation shall be fulfilled within a period of 90 days from the date of receipt of the first import consignment i.e. the date on which the first import consignment is cleared by the customs authorities against the authorization.*	*(a) Fulfillment Period of EO under an Advance Authorisation shall commence from Authorisation issued date, unless otherwise specified. EO shall be fulfilled within 18 months except in case of supplies to projects/turnkey projects in India/abroad under deemed exports category where EO must be fulfilled during Contracted duration.* *(b) RA may consider a request of Advance Authorisation holder for one extension of EO upto 6 months from the EO expiry date subject to payment of composition fee of 0.5% of the shortfall in E.O.*

151. However, under Para 4.22.1 of the Handbook of Procedure 2009-2014, a similar period of 6 month has been provided from the EO expiry date subject to payment of composition fee of 2% of the duty saved on unutilized imported items as per the authorization.

152. A further 6 month has been provided subject to payment of composition of fee of 5% of the duty saved on the unutilized imported items as per the *authorization."*

13. Paragraph 4.23 of the Handbook of Procedure to Foreign Trade Policy has also been extracted in paragraph 129 of the order dated 19.09.2022 in W.P.(MD).No.15613 of 2016. Paragraph 129 to 136 from the order dated 19.09.2022 in W.P.(MD).No.15613 of 2016 are extracted below for better clarification:-

> *129. Question of revalidation of an Advance Authorisation would arise only if such application is filed within 6 months from the date of expiry of the Advance Authorisation as is evident from a reading of Para 4.23 of the HOP. Paragraph 4.23 Handbook of Procedure before and with effect from 27.8.2009 are reproduced below for the comparison:-*

Paragraph 4.23 Handbook of Procedure before 27.08.2009 under the Foreign Trade Policy 2004-2009.	*Paragraph 4.23 Handbook of Procedure with effect from 27.08.2009 under the Foreign Trade Policy 2009-2014*

Revalidation of Authorisation	***Revalidation of Authorisation***
*The Regional Authority may consider a request of the original authorization holder and grant one revalidation for a period of 6 months from the date of expiry of the original authorization. The request(s) for revalidation of authorization shall be made in the form given in '**Aayaat Niryaat Form**'*	*a) RA may consider a request of Original Authorization holder and grant one revalidation for 6 months from expiry date. Request(s) for revalidation of Authorisation shall be made in **ANF 4E**.* *b) In case of revalidation of advance authorization issued prior to 27.08.2009, it should be ensured that VA is maintained at 15% (and as per details mentioned in Paragraph 4.16 of FTP) mentioned in Paragraph 4.16 of the FTP or as stipulated in the Advance Authorization, whichever is higher. However, for Advance Authorizations for products with VA as per Appendix 11B, the VA shall be as per the VA stated in Appendix 11B or as stated in Advance Authorisation, whichever is higher.*

130. Request for an revalidation of an Advance Authorisation can be made once for 6 months from the expiry of date of its validity in terms of Paragraph 4.23 of the Handbook of Procedure and/or for enhancement/reduction in the entitlement in terms of Paragraph 4.21 of the Handbook of Procedure can be made only either before or after export.

131. Under Paragraph 4.23 of the Handbook of Procedure to Foreign Trade Policy 2004-09, the Regional Authority can consider a request of an original Authorisation holder and grant one revalidation for 6 months from the expiry date.

> *132. Request (s) for revalidation of Authorisation was to be made in Form ANF 4E.*
>
> *133. Thus, the petitioner could expect re-validation of the Advance Authorisation only for a period of 6 months from the date of expiry of validity period. The period of six month would have expired on 27.09.2009 and on 23.10.2009.*
>
> *134. The request for revalidation was made on 16.02.2011 by the petitioner long after the period of validity of the respective Advance Authorisations expired on 27.03.2009 and on 23.04.2009.*
>
> *135. In this case, requests were made on 16.02.2011 and on 28.12.2011. Since the application was filed only on 16.02.2011 for the first time i.e. long after the date prescribed and beyond the period of 6 month and since the petitioner did not apply either for revalidation or extension of period of E.O immediately, within the prescribed period, the case of the petitioner cannot be considered under paragraph 2.5 or paragraph No.2.52 of Foreign Trade Policy beyond the period under 9.3 of the Foreign Trade Policy. Therefore, there is no error in the impugned decision of the second respondent.*
>
> *136. Paragraph 9.3 of the relevant Foreign Trade Policy cannot be pressed for condoning the delay. Failure to file such application also cannot be condoned and overlooked by pressing Paragraphs 2.5 and 2.58 of the respective Foreign Trade Policy. Such applications even if filed belatedly can be entertained only within the time line stipulated in Paragraph 9.3 of the Policy as it stood between 2009-2014/2009-14.*

14. The revalidation of the Advance Authorization can be made

only for a period of six (6) months from the date expiry of the Original Authorization.

15. In other words the application could be made in time before the expiry of the period. However, revalidation can be made only for a period of six (6) months from the date of expiry of the Original Authorization. The six (6) months period expired long before.

16. Thus, as per paragraph 4.23 of the Hand book of Procedure as in force from 27.08.2009, the petitioner had to satisfy with the requirements of 4.23(b) as in Column II to the above table.

17. Whereas, the request of the petitioner for revalidation was made on 16.02.2011 long after the period of validity of the respective Advance Authorizations expired on 27.03.2009 and 23.04.2009.

18. Thus, it cannot be said that there is an error apparent on the face of the record. The order is detailed. Therefore, a review of the order is impermissible. A review cannot be an appeal in disguise.

19. That apart, the petitioner has also filed an appeal against the

order of this Court and therefore, on this count also the present application filed to review the order on the ground of error apparent on the face of the record cannot be countenanced. The petitioner having filed an appeal should pursue its appellate remedy before the Hon'ble Division Bench.

20. Therefore, this Review Application is liable to be dismissed and is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No cost.

11.03.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non Speaking Order
rgm

To

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   Ministry of Commerce,
   Udgyog Bhavan,
   New Delhi – 110 001.

2. The Policy Relaxation Committee (PRC),
   O/o. Directorate General of Foreign Trade,

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C.SARAVANAN, J.

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