BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.11.2024**

CORAM:

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

W.P.(MD)No.21773 of 2018
and
W.M.P.(MD)Nos.19692 & 19693 of 2018

M/s. Gateway Green Tech Pvt. Ltd.,
Through its Director, A.Akila,
W/o. Arun Kumar, 37, Anadappa Nadar Street,
Sivakasi- 626 123, Virudhunagar District. ... Petitioner

/Vs./

1. The Joint Director General of
Foreign Trade,
Plot No.117, K.K.Nagar,
Madurai-625020.

2. The District Collector,
Virudhunagar District,
District Collectorate,
Virudhunagar.

3. The Thasildar,
Sivakasi,
Virudhunagar District. ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the first respondent's impugned orders in authorisation No.3530003207 on 30.01.2017 and in authorisation No.3530003640 on

18.04.2017 and consequently quash the notice of the third respondent dated 25.09.2018 in A1/15148/2016.

For Petitioner : Mr.C.Arunmozhi Rajashankar

For Respondents : Mr.S.Jeyasingh
Senior Central Government Standing Counsel for R1
: Mr.D.Gandhi Raj
Special Government Pleader for R2 & R3

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 30.01.2017 and 18.04.2017 and consequent notice of the third respondent dated 25.09.2018, thereby, issue demand to the tune of Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) towards non fulfillment of export obligation in full against the authorisation.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner is engaged in manufacturing paper cups and its machineries were imported from Abroad. The petitioner also availed benefit of deduction in import duty by obtaining Bank guarantee for the

import duty with a condition to export paper cup. However, the manufacturing unit is not able to run profitably and it was closed in the year 2013. Therefore, there was loss to the petitioner and the export obligation could not be fulfilled by the petitioner. Hence, the first respondent release the demand to the tune of Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) for non fulfillment of export obligation by the petitioner. In pursuant of the demand, the third respondent issued notice to recover the said sum under the Revenue Recovery Act.

4. The learned Senior Central Government Standing Counsel for the first respondent submitted that the petitioner's Company had obtained EPCG authorisation No.3530003207 dated 29.04.2008 for duty saved amount of Rs.1,46,132/- for import of capital goods with export obligation to export paper cup worth 28,901.26 US Dollars within a period of 8 years from the date of issue of authorisation. However, the petitioner also obtained EPCG authorisation No.3530003640, dated 17.04.2009, for duty saved amount of Rs.4,28,517/- for import of capital goods with export obligation to export paper cup worth 67.021.23 US Dollars within a period of 8 years from the date of issue of authorisation.

5. Thereafter, the petitioner had not submitted statements of exports evidencing fulfillment of export 50% of export obligation. Therefore, the petitioner was issued notice dated 06.05.2016, thereby informing that the export obligation period expired and requested to submit the document within 15 days. However, the said communication was refused to receive by the petitioner. Once again, the petitioner was served with notice dated 03.11.2016 under Section 14 for action under Section 11-(2)(3) (5)(6) and (7) of FT (DR) Act 1992 as amended in 2010 and also for action under para 2.17 of HBP and action under Rule 7(k) of the Foreign Trade Regulation Rules, 1993. The said notice was also returned as “refused”. Finally, on 30.01.2017, the first respondent passed an order for denied entities list, thereby, ordered no further authorisation and any other benefit shall be issued to the petitioner or to any other Company, in which the Directors of this Company are directly or indirectly involved in the day to day activities of that Company as per provisions of handbook ready with Rule 7(1) of the Foreign Trade (Regulation) Rules, 1993. The said notice was also returned as refused to receive and also left. Finally on 19.04.2017, the first respondent ordered

to recover a sum of Rs.6,00,000/- and Rs.23,00,000/- towards penalty for non fulfillment of obligation against EPCG authorisation.

6. After receipt of the same, the petitioner did not respond and as such finally on 18.04.2017, the first respondent passed an order that the petitioner and the Directors are guilty of violating the condition of authorisation in question, thereby liable to pay penalty under Section Section 11-(2) of the Foreign Trade (Development and Regulation) Act, 1992, to the tune of Rs.6,00,000/- and Rs.23,00,000/- towards non fulfillment of export obligation in full against the subject authorisation. Thereafter, the third respondent was directed to recover the said amount under the Revenue Recovery Act. In pursuant to the order passed by the first respondent, the third respondent issued notice to the petitioner / Directors under the Revenue Recovery Act.

7. The learned counsel for the petitioner would submit that the petitioner was never served with any notice. Since the petitioner Company was not in existence at the time of issuance of all the notice, it was closed in the year 2014 itself and there was no manufacturing

activities. The machineries as well as the company itself were taken possession under SARFAESI Act by the lender, viz., Lakshmi Vilas Bank. Therefore, there was no production activity.

8. In view of the above submission, there is an appeal provision as against the order passed by the first respondent under Section 15 of the Foreign Trade (Development and Regulations) Act, 1992 to the Additional Director General of Foreign Trade, office of the Additional Director General of Foreign Trade, Chennai, on condition to deposit the penalty amount. Therefore, the petitioner approached this Court by way of this Writ Petition, under Article 226 of the Constitution of India, on the ground of violation of principles of natural justice.

9. In view of the above, this Court is inclined to set aside the order passed by the first respondent only on the ground that the Company was not in existence at the time of issuance of notice and the petitioner was not given proper opportunity to putforth their case. Since the petitioner's machineries and the entire company premises were seized and auctioned under SARFACIE Act by the lender – Lakshmi Vilas Bank, on condition

that the petitioner shall deposit penalty for a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only).

10. Hence, the impugned order passed by the first respondent is hereby quashed on condition that the petitioner shall deposit a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) within a period of two weeks from the date of receipt of copy of this order, with the first respondent. On such deposit, the first respondent is directed to issue fresh notice to all the Directors in the address mentioned in the proceedings initiated on the third respondent and after giving opportunity, pass final order within a period of eight weeks thereafter.

11. If the petitioner fails to deposit the said amount of Rs. 12,00,000/- (Rupees Twelve Lakhs only), as directed by this Court, ie. within a period of two weeks from the date of receipt of copy of this order, the Writ Petition shall stand automatically dismissed and the respondents are at liberty to proceed further under the Revenue Recovery Act, to recover the penalty from the petitioner.

12. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.11.2024

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
LS
Note: Issue order copy on 25.11.2024.
TO:-

1. The Joint Director General of
   Foreign Trade,
   Plot No.117, K.K.Nagar,
   Madurai-625020.

2. The District Collector,
   Virudhunagar District,
   District Collectorate,
   Virudhunagar.

3. The Thasildar,
   Sivakasi,
   Virudhunagar District.

G.K.ILANTHIRAIYAN, J.

LS

Order made in
W.P.(MD)No.21773 of 2018

Dated:
25.11.2024