IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2025

CORAM :

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.35899 of 2024

M/s Abi Pulp & Paper Equipments
represented by its Managing Partner
Sri.N.Sudhakar
28/1, Nanjappa Thevar Nagar
Kannampalayam Main Road
Kannampalayam Post
Coimbatore 641 402 .. Petitioner

v.

1. The Additional Director General
of Foreign Trade
4th Floor, Shastri Nagar Annexe
26, Haddows Road, Nungambakkam
Chennai 600 006

2. The Joint Director General of Foreign Trade
1554, India Life Building (Annexe)
1st Floor, Trichy Road
Coimbatore 641 018 .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Appeal issued from File No.CHNECAAPPEAL00002908AM25 dated 22.08.2024 passed by the 1st respondent and quash the same as the same being arbitrary and violative of principles of natural justice and direct the 1st respondent to decide the appeal filed by the petitioner on merits.

For Petitioner :: Ms.N.Asmitha

For Respondents :: Mr.Venkataswamy Babu
Senior Panel Counsel

ORDER

This writ petition has been filed challenging the order passed by the appellate authority in File No.CHNECAAPPEAL00002908AM25 dated 22.08.2024.

2. The case of the petitioner is that they are engaged in the business of manufacturing machinery for paper industry. The petitioner was issued with the EPCG licence dated 31.12.2007. In terms of this licence, the petitioner is entitled for import of specified goods by saving duty on the condition that the petitioner has to produce and export pulp and paper machinery and other machineries to an extent of eight times the value of the duty saved. This condition has to be complied within a period of eight years from the date of issuance of the licence.

3. The petitioner was not able to satisfy the requirement due to various practical difficulties involved in the manufacturing of the machineries. Hence the petitioner decided not to utilize the EPCG licence and they imported machineries on payment of full customs duty. While so, a show cause notice dated 27.04.2015 came to be issued by the second respondent calling upon the petitioner to submit the import and export documents evidencing fulfillment of the export obligation. The petitioner submitted a reply dated 16.05.2015 informing that they have not utilized the EPCG licence during the time of import and they have not claimed any benefit out of the EPCG licence. The show cause notice was not acted upon thereafter.

4. Once again, the petitioner received yet another show cause notice dated 11.03.2022 and the petitioner submitted a reply on 24.03.2022 along with all the relevant documents.

5. The grievance of the petitioner is that without considering the stand taken by the petitioner in the reply and without taking note of the documents

submitted, the second respondent passed the order dated 04.08.2022 and imposed penalty to the tune of Rs.16,96,000/- towards non-fulfillment of the export obligation.

6. The petitioner, aggrieved by the order passed by the second respondent, filed an appeal before the first respondent. The first respondent, through the impugned proceedings dated 22.08.2024, rejected the appeal on the ground that the appeal has been filed beyond the period of limitation prescribed under Section 15(1)(b) of the Foreign Trade (Development and Regulation) Act, 1992. Aggrieved by the same, the present writ petition has been filed before this Court.

7. The first respondent has filed a counter affidavit. The first respondent has taken a stand that the petitioner did not submit the documents towards fulfillment of the export obligation after the expiry of the period of export obligation on 31.12.2015. When the proceedings were pending before the second respondent, the petitioner did not even produce the non-utilization certificate from the jurisdictional customs and therefore

the second respondent had no other alternative except to impose penalty against the petitioner. The first respondent has taken a further stand that the appeal must be filed within the limitation period and whereas the appeal was filed by the petitioner much beyond the limitation period, after nearly one year and four months. Therefore the appeal was rejected. Hence the respondents have justified the imposition of penalty against the petitioner and have sought for the dismissal of this writ petition.

8. Heard Ms.N.Asmitha, learned counsel appearing on behalf of the petitioner and Mr.Venkataswamy Babu, learned Senior Panel Counsel appearing on behalf of the respondents.

9. The short issue that arises for consideration is as to whether the impugned order has been passed against the petitioner without affording sufficient opportunity and without considering the stand taken by the petitioner and the documents submitted by the petitioner.

10. It is not in dispute that the petitioner availed of EPCG licence in

the year 2007. The petitioner has to produce and export to an extent of eight times of the value of duty saved and this condition must be complied within a period of eight years from the date of issuance of licence. Show cause notice was issued by the second respondent mainly on the ground that the petitioner did not submit documents towards fulfillment of the export obligation after the expiry of the export obligation period. Therefore, the second respondent imposed penalty and the same was confirmed by the first respondent.

11. The main ground that was taken by the learned counsel for petitioner is that the petitioner did not avail of the benefits of the EPCG licence and the machineries were imported only upon payment of full customs duty. The learned counsel for petitioner also brought to the notice of this Court the non-utilization certificate that was issued by the jurisdictional customs. Unfortunately, this document was not produced before the second respondent before the orders came to be passed by the second respondent.

12. The second respondent has passed the order mainly on the ground that the petitioner did not submit the relevant documents either evidencing fulfillment of the export obligation or produced the non-utilization certificate from the jurisdictional customs. While filing the appeal, the petitioner was in possession of the non-utilization certificate issued by the jurisdictional customs. But, however, the appellate authority has chosen to reject the appeal on the ground that it was filed beyond limitation.

13. On a careful consideration of the submissions made by the learned counsel on either side and the materials available on record, it is seen that the petitioner has a contestable case to agitate before the authorities. If the petitioner had not utilized the EPCG licence and had paid the import duty every time when the machineries were imported, the fulfillment of the export obligation will not apply to the petitioner. This crucial issue must be decided by the authorities, more particularly, in the light of the non-utilization certificate that was issued by the jurisdictional customs. Hence this Court is inclined to remand this case back to the file of the first respondent, who is the appellate authority, to deal with the appeal on merits

and in accordance with law.

14. In the light of the above discussions, the impugned proceedings of the first respondent dated 22.08.2024 are quashed and the matter is remanded to the file of the first respondent. The first respondent shall deal with the appeal on merits and in accordance with law and the issue of delay need not be put against the petitioner. Final orders shall be passed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order after affording opportunity to the petitioner.

15. In the result, the writ petition is allowed with the above direction. Consequently, W.M.P.No.38757 of 2024 is closed. No costs.

Index : yes/no 11.06.2025
Neutral citation : yes/no

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To

1. The Additional Director General
   of Foreign Trade
   4th Floor, Shastri Nagar Annexe
   26, Haddows Road, Nungambakkam
   Chennai 600 006

2. The Joint Director General of Foreign Trade
   1554, India Life Building (Annexe)
   1st Floor, Trichy Road
   Coimbatore 641 018

N.ANAND VENKATESH,J.

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