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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-03-2026

CORAM

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

Writ Petition Nos.9303 and 9304 of 2006
and
W.M.P.Nos.10301 and 10302 of 2006

W.P.No.9303 of 2006

S & S Power Switchgear Limited,
represented by its
Chief Manager-Legal & Secretarial
V.Ramachandran,
111, Mount Poonamallee Road,
Porur, Chennai 600 116.

.. Petitioner

/versus/

1.The Joint Director General of Foreign Trade,
(Enforcement-cum-Adjudication)
Government of India,
Ministry of Commerce and Industry,
Department of Commerce,
Office of the Zonal Joint Director General
of Foreign Trade,
38-39, Whites Road,
Royapettah, Chennai 600 014.

.. 1st Respondent

2.The Additional Director General of Foreign Trade,
Government of India,
Department of Commerce,



Directorate General of Foreign Trade,
Udyog Bhavan,
New Delhi 110 011.

.. 2nd Respondent

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3.Union of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhavan,
New Delhi 110 011.

.. 3rd Respondent

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the second respondent herein in No.11/202/2004-05/ECA-I, dated 20.10.2005 preferred against the proceedings of the first respondent in Order No.230 of AM 2004 dated 02.08.2004, and quash the same and direct the second respondent to re-hear the appeal filed by the petitioner against the proceedings of the first respondent in Order No.230 of AM 2004, dated 02.08.2004, in accordance with law.

For Petitioner :Mr. N.Prasad

For Respondents :Mr.AR.L.Sundaresan, ASG Asst.by
Mr.B.Rabumanohar, SCGSC

W.P.No.9304 of 2006

S & S Power Switchgear Limited,
represented by its
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V.Ramachandran,
111, Mount Poonamallee Road,
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.. Petitioner

/versus/



1.The Joint Director General of Foreign Trade,
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New Delhi 110 011.

.. 2nd Respondent

3.Union of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhavan,
New Delhi 110 011.

.. 3rd Respondent

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the second respondent herein in No.11/229/2004-05/ECA-I, dated 10.11.2005 preferred against the proceedings of the first respondent in Order No.231 of AM 2004 dated 12.08.2004, and quash the same and direct the second respondent to re-hear the appeal filed by the petitioner against the proceedings of the first respondent in Order No.231 of AM 2004, dated 12.08.2004, in accordance with law.



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For Petitioner :Mr. N.Prasad

For Respondents :Mr.AR.L.Sundaresan, ASG Asst.by
Mr.B.Rabumanohar, SCGSC

COMMON ORDER

(Order of the Court was delivered by Dr.G.Jayachandran,J.)

The writ petitioner S and S Power Switchgear Limited before us is engaged in the manufacture and sale of vacuum circuit breakers, disconnectors and other engineering goods. On receiving an export order from the foreign buyer at Malaysia, the petitioner sought an advance licence to import raw materials for the fulfilment of its export obligation. The same was granted to the writ petitioner vide order dated 26.06.1997 and 31.03.1997.

2.The writ petitioner was unable to fulfil the export obligation in full and sought for extension of time which was also granted. However, even after the extension of time, it was not able to complete the export obligation in full. Consequently, the order-in-original came to be passed on 02.08.2004 by the Adjudicating Authority, which reads as below:

“9.The Notice Firm’s actions of failing to appear for the Personal Hearing and also by their default in fulfilling the conditions



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*of the licence have gone against them and they have not fulfilled the conditions of the licence. Therefore, in terms of para 13 of the FT (D & R) Act, I hereby impose a total penalty of **Rs.83,63,653/- (Rupees eight three lakhs sixty three thousand six hundred and fifty three only)** which is equivalent to 1% of unfulfilled. FOB value plus customs duty saved plus 15% on CD saved for 6 years plus a personal penalty of Rs.10,000/-, on the Notice Firm as per the powers vested in me under **Section 13 of the FT (D&R) Act, 1992**. This amount should be paid **within 15 days** from the date of this order, in the form of a Demand Draft drawn in favour of **“The Zonal Joint Director General of Foreign Trade, Chennai”**.*

3. It is pertinent to note that the said order was passed after issuing a show cause notice and giving an opportunity of personal hearing to the writ petitioner. Being aggrieved by the said order, the writ petitioner has approached before the Additional Director General of Foreign Trade by way of an appeal under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 and sought waiver of depositing the penalty amount levied under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 as pre-condition to file the appeal. The Appellate Authority, after considering the merits of the case, declined to grant waiver of paying the penalty amount as pre-condition to entertain the appeal and consequently, dismissed the appeal vide order dated 20.10.2005.



4. The operative portion of the order of the Appellate Authority dated 20.10.2005

reads as below:

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“5.I have gone through the facts of the case available on record and the submissions made by the appellant in the appeal. So far as registration of case with BIFR, is concerned, I am amazed as to how two cases of the same company are registered, one in the year 2000 and another in 2003. The proceedings before me are in respect of the licence taken by the appellant company on 26.06.1997, export obligation period of which expired on 31.12.1998. Hence, these proceedings pertain to the period prior to the company going to BIFR and hence, I am not inclined to give any relief on this ground. Further, the appellants have not submitted any other fact which were not considered by the Adjudicating Authority. They themselves have accepted that they have not completed the export obligation. Hence, I do not find any reason to interfere with the Adjudication Order. Accordingly, in view of the powers vested in me in terms of the provisions of Section 13 read with Section 15 of the Foreign Trade (Development & Regulation) Act, 1982, the following is made:-

ORDER

No.11/202/2002-03/ECA.I

October 20, 2005

The appeal is dismissed.”

5. The present writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records of the Appellate Authority and quash the same and consequently, to direct the Appellate Authority to re-hear the appeal filed by the writ petitioner and decide it on merits without insisting on deposit of penalty amount.



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6. The learned counsel appearing for the writ petitioner made his submissions on two folds. Firstly, he would submit that the proviso to Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, empowers the Appellate Authority to waive the deposit of penalty amount, either unconditionally or subject to such condition, as it may impose, taking into consideration of the hardship of the appellant. Whereas, in this case, despite placing on record that the appellant was facing financial hardship and already been referred to BIFR, the said hardship has not been considered. Secondly, the learned counsel also ventured to canvass that any un-fulfillment of export obligation will not *per se* attract penal action under Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and for the said un-fulfillment export obligation, the Department ought to have resorted to the provision of Section 28 of the Customs Act, 1962 for recovery of differential duty.

7. Per contra, the learned Additional Solicitor General appearing for the Department would submit that the first limb of the argument placed by the learned counsel appearing for the petitioner has no legs to stand, since the hardship of the appellant projected cannot be at the cost or the interest of the Revenue. It is the discretion of the Appellate Authority to consider any waiver. In the case, it is found that the reference to BIFR is only subsequent to the expiry of the export obligation period.



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Therefore, the post-event has not rightly been taken into consideration by the Appellate Authority as a hardship. Insofar as the second limb of the argument is concerned, telescoping of the Customs Act, 1962 to the Foreign Trade (Development and Regulation) Act, 1992 is not permissible, since the exemption and concession to the importer on a specific condition have to be tested under the respective Act. The collection of differential duty provided under Section 28 of the Customs Act, 1962 will not foreclose the right of the Department to claim penalty for non-fulfilment of the export obligation promised under Foreign Trade (Development and Regulation) Act, 1992.

8. On hearing the rival submissions, we find that the discretion exercise of the Appellate Authority and the reason assigned by it, does not suffer from any non-application of mind or perversity. Therefore, we uphold the order of the Appellate Authority. However, in order to enable the writ petitioner to test the sustainability of the order-in-original, we give liberty to the writ petitioner to pay the penalty amount demanded within a period of 30 days from today. On such payment, the appeal shall be restored on file if any additional ground is raised by the appellant, the same also be considered. The Appellate Authority shall thereafter decide the appeal on merits.



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9. With the above observations, these Writ Petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed. No order as to costs.

(Dr.G.JAYACHANDRAN,J.)

(SHAMIM AHMED,J.)

27.03.2026

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Index:yes/no

Neutral citation:yes/no

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