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**(2012) 06 MAD CK 0203**

**In the Madras High Court**

**Case No :** Writ Petition No. 13223 of 2012 and M.P. No's. 1-2 of 2012

Indo Tech Transformers Ltd.

APPELLANT

Vs

JT. DGFT

RESPONDENT

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**Date of Decision :** 18-06-2012

**Acts Referred:**

**Citation :** (2013) 294 ELT 535

**Hon'ble Judges :** P.P.S. Janarthana Raja, J

**Bench :** Single Bench

**Advocate :** V. Balasubramanian, for the Appellant; P. Mahadevan, SCCG and T. Chandrasekran, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.P.S. Janarthana Raja, J.—By consent of both parties, the main writ petition itself is taken up for final disposal at the admission stage. The petitioner has filed the above writ petition seeking to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent herein in Import Export Code No. 0488011868, quash the impugned order dated 4-4-2012 cancelling the petitioner's Import Export Code No. 0488011868 and direct the first respondent to consider the rectification request of the petitioner dated 21-10-2005 and 14-3-2006.

2. The petitioner company has obtained a Special Import Licence bearing No. 410009594, dated 13-10-2000 from the first respondent for supply of 805 numbers 100 KVA transformers as deemed Exports to M/s. Uttar Haryana Bijli Vitran Nigam Limited, Haryana. The petitioner company has utilized the said licence and availed duty exemption for the inputs sourced for the manufacture of the said transformers. With great surprise to the petitioners, the first respondent has issued show cause notice for non-fulfilment of export obligation within the export obligation period and in pursuance of the said notice, the first respondent passed an order dated 17-10-2005. Later the petitioner has submitted the proof of fulfilment of their export obligation vide letter dated 21-10-2005 and

14-3-2006 along with necessary enclosures for cancellation of the obligation. Subsequently, the Clearing Agent of the petitioner informed that the Import Export Code No. 0488011868 was cancelled and unable to process the Bill of Entry to the petitioner-company. Immediately, the petitioner has approached the first respondent requesting him to lift the ban and has also made representation to the Grievance Committee on 17-4-2012. Subsequently, the respondent has passed the impugned order dated 4-4-2012 cancelling the petitioner's Import Export Code No. 0488011868. But the same was not served on the petitioner and no opportunity was given to the petitioner before passing the impugned order. Questioning the same, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner vehemently contended that the impugned order was passed by the first respondent without giving opportunity of hearing to the petitioner and the copy of the said order is not served on them and through internet only the petitioner knew about the order. Therefore, the order of cancellation passed by the first respondent is not in accordance with law and the same has to be quashed.

4. The learned Senior Counsel for Customs, Excise and Service Tax appearing for the first respondent filed a counter and submitted that the petitioner has not furnished any documentary evidence for having exported the finished product and hence, the order passed by the first respondent is valid in law and sought to dismiss the writ petition.

5. Heard the learned counsel appearing on either side and perused the documents available on record.

6. There is no dispute that before passing the impugned order dated 4-4-2012, no opportunity was given to the petitioner and also copy of the order was not sent to them, which amounts to violation of the principles of natural justice. Before cancelling the petitioner's Import Export Code No. 0488011868, the first respondent ought to have given an opportunity of hearing to enable them to substantiate their case. Considering the facts and circumstances of the case and in the interest of justice, the impugned order dated 4-4-2012 passed by the first respondent is quashed with a direction to the first respondent to consider the matter afresh and pass order in accordance with law as expeditiously as possible, preferably, within a period of two weeks from the date of receipt of a copy of this order, after giving opportunity to the petitioner to substantiate their claim. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.