(2009) 08 DEL CK 0327

In the Delhi High Court

Case No : Writ Petition (C) 5086 of 2008

Aadik Exports APPELLANT

Vs

Directorate of Enforcement RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 18(2), 18(3)

Citation : (2010) 98 SCL 28

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Rajesh Yadav, for the Appellant; Rajdipa Behura, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The petitioner, Aadik Exports, by way of present writ petition has challenged order dated 2-7-2008 passed by the Appellate Tribunal for Foreign Exchange disposing of the application for waiver of pre-deposit of penalty amount of Rs. 3,00,000 with the condition that the petitioner will deposit 50 per cent of the penalty amount within thirty days.

2. In 1992, the petitioner had supplied garments to a buyer in Finland vide two invoices of US$ 11279.50 and US$ 5642.50. It is the case of the petitioner that the foreign buyer did not take delivery of the consignment due to alleged defects and the shipment was stored in the bonded warehouse at Helsinki, Finland. It is the case of the petitioner that a new foreign buyer could not be located and the agent of the foreign buyer later on exercised right of lien on the cargo. The petitioner had no option but to write off the two invoices as legal expenses involved for initiating litigation were substantial, while value of the two consignments was marginal. Learned Counsel for the petitioner in this regard has also relied upon certificate issued by the American Express Bank to write off the outstanding export proceeds and close the file of the petitioner.

3. It is admitted that the Reserve Bank of India has granted approval to waiver/

write off the export proceeds of one of the consignments valued at US$ 5642.50. However, no waiver or write off in respect of the other assignment of US$ 11297.50 has been granted by the Reserve Bank of India.

4. By adjudication order dated 27-10-2004, the petitioner was condemned to be guilty of charges u/s 18(2) and 18(3) of the Foreign Exchange Regulation Act, 1973 and penalty of Rs. 3,00,000 has been imposed. The petitioner has filed an appeal before the Appellate Tribunal for Foreign Exchange. By the impugned order dated 2-4-2008, the application for waiver of pre-deposit was disposed of with the direction that the petitioner will deposit Rs. 1,50,000, i.e., 50 per cent of the penalty amount within thirty days.

5. By the interim order passed by this Court on 18-7-2008, the operation of the order dated 2-4-2008 was stayed, subject to the petitioner depositing Rs. 75,000 within four weeks. The petitioner has deposited the said amount.

6. The two consignments of different values were exported to the same foreign buyer. It is the case of the petitioner that the buyer did not lift the consignments due to alleged defects and the same remained at the shipment bonded warehouse at Helsinki, Finland. It is also the contention of the petitioner that keeping in view the legal expenses involved, the petitioner did not initiate any legal proceedings against the foreign buyer in Finland. The petitioner in this connection has also drawn my attention to the write off/waiver granted by the Reserve Bank of India in respect of one consignment accepting the case of the petitioner. It is stated that the petitioner was entitled to waiver in respect of the second consignment to the same buyer. It is stated that there is no difference in the two cases.

7. Learned Counsel for the petitioner during the course of hearing states that the petitioner will furnish security to the satisfaction of the Enforcement Directorate for the balance penalty amount of Rs. 2,25,000.

8. Keeping in view the aforesaid facts, the impugned order dated 2-4-2008 is modified with the direction that the petitioner will deposit Rs. 75,000 towards the penalty amount and will also furnish security of Rs. 2,25,000 to the Enforcement Directorate towards balance penalty amount. The petitioner has already deposited Rs. 75,000. The petitioner will also file an affidavit with the Enforcement Directorate disclosing his personal assets and assets of his wife and dependent children including their bank accounts and immovable properties. The security and the affidavit will be filed within a period of four weeks.

The writ petition is accordingly disposed of.