(2011) 08 DEL CK 0445

In the Delhi High Court

Case No : Writ Petition (C) 6345 of 2011 and CM. No. 12750 of 2011 (for stay)

AAR BEE Exports — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2011) 274 ELT 8 : (2012) 27 STR 418 : (2013) 38 STT 70

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Priyadarshi Manish and Anjali Manish, for the Appellant; Sonia Mathur and M.P. Singh for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 4th December, 2007 of the Additional Director General of Foreign Trade dismissing the appeal preferred by the Petitioner.

2. This writ petition has been preferred after nearly four years of the order. The Petitioner has in para 47 of the petition referred to the order dated 4th December, 2007; thereafter in para 48, without stating that the order was not received by the Petitioner, it is stated that on 7th January, 2008, the Petitioner had requested the Appellate Authority to send all communications at the address of the Advocate; a perusal of the letter dated 7th January, 2008 does not show that the Petitioner / its Advocate had by the said letter asked for the order to be sent at the address given therein; rather it is the case of the Petitioner in paras 45 & 46 of the petition that hearing was granted by the Appellate Authority on 4th July, 2007, 27th August, 2007 and 15th October, 2007. The letter dated 7th January, 2008 even if believed to have been sent, appears to have been sent merely to raise a ground subsequently. The Petitioner thereafter claims to have remained quiet till 23rd March, 2011, when it appears that proceedings for recovery were initiated. Though it is claimed that the order dated 4th December,

2007 filed along with the writ petition was handed over thereafter to the Petitioner but there is No. proof of the same. Ordinarily, had the Petitioner not received the order dated 4th December, 2007, a letter enquiring about the fate of the appeal pursuant to the hearings aforesaid would have been written and / or a formal application for supplying the copy of the order would have been made. The explanation rendered for long delay in preferring the petition is thus found to be false. The petition is thus liable to be dismissed on principles of laches, acquiescence and waiver.

3. However, to satisfy the judicial conscience, the matter has also been examined on merits.

4. The Adjudicating Authority had vide order dated 8th December, 2001 imposed fiscal penalty of Rs. 80,00,000/- on the Petitioner for non fulfillment of the export obligation after availing of benefits in import duty; the Petitioner, aggrieved therefrom preferred an appeal; however, the said appeal was dismissed by the Appellate Authority on 20th July, 2005 for default in appearance of the Petitioner and also for the reason of the Petitioner having failed to make the pre-deposit.

5. Aggrieved therefrom, the Petitioner preferred W.P.(C) No. 2413/2006 in this Court and which was disposed of vide order dated 21st February, 2006; even though this Court found that the Petitioner had received more than sufficient indulgence but in the interest of justice, subject to the Petitioner depositing a sum of Rs. 1,00,000/- with the Prime Minister''s Relief Fund, the Appellate Authority was directed to grant a further opportunity to the Petitioner.

6. The Appellate Authority thereafter vide order dated 5th May, 2006 remanded the matter to the Adjudicating Authority. The Adjudicating Authority on remand and after giving opportunity of hearing to the Petitioner, recorded that the Petitioner did not regularize the shortfall in exports as per the Export-Import Policy and vide order dated 23rd February, 2007 imposed fiscal penalty of `66,00,000/- on the Petitioner. The Petitioner again preferred an appeal against the order of the Adjudicating Authority and which appeal has been dismissed vide order dated 4th December, 2007 impugned in this petition.

7. The Appellate Authority has in the order dated 4th December, 2007 noted that the Petitioner inspite of being required in law to make a pre-deposit had failed to make a pre-deposit and thus dismissed the appeal. It has further been held that the Petitioner instead of regularizing the default had been buying time and had not been able to make out any case whatsoever.

8. The counsel for the Petitioner has offered that the Petitioner is willing to pay the differential duty of Rs. 15,00,000/- in three equal monthly installments.

9. The Petitioner has for the last nearly ten years avoided the penalty imposed on him. If the Petitioner was aggrieved from the requirement of pre-deposit, the Petitioner ought to have taken appropriate remedies there against immediately after preferring the appeal in the year 2007. The entire conduct of the Petitioner

shows that the Petitioner has been evading the duty due from him and has filed this petition only upon being threatened with recovery. However, an opportunity has been given to the Petitioner to deposit Rs. 30,00,000/- in this Court for the case to be considered. The counsel for the Petitioner is not willing for the same.

10. In the circumstances aforesaid, No. error is found in the order of the Appellate Authority of rejecting the appeal for the reason of the Petitioner having not made the pre-deposit.

11. I may notice that the counsel for the Respondents appearing on advance notice has argued that besides the aspect of delay, the petition is also not maintainable for the reason of alternative remedies of appeal being available and which have not been availed.

12. There is No. merit in the petition. The same is dismissed. No. order as to costs.

CM No. 12751/2011 (u/S 151 CPC for exemption)

Allowed, subject to just exceptions.