

(2000) 08 AHC CK 0156

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 915 of 1999 with Writ Petition No's. 415 of 2000 and 923 of 1999

Agemo Leather Components (P) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 130 ELT 408

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : P.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Civil Misc. Writ Petition No. 915 of 1999, Writ Petition No. 415 of 2000 and Writ Petition No. 923 of 1999 are being disposed of by a common judgment. Heard Shri P.K. Jain, learned Counsel, for petitioner and learned Standing Counsel for Central Government.

2. Writ Petition No. 915 of 1999 is being treated as the leading case. The prayer in Writ Petition No. 915 of 1999 is for mandamus directing the respondents to issue drawback and DEPB licences to the petitioner in respect of the export made by the petitioner and give all benefits to the petitioner for which the petitioner is legally entitled and to decide the application of the petitioner copies of which are Annexure 3 and 5 to the writ petition. A further prayer is for a mandamus directing the respondents to comply with the circular letter dated 8-12-1997 and to give all benefits for the exports made by the petitioner.

3. In para 2 of the writ petition it is alleged that the petitioner is doing business of export to overseas buyers and is entitled for the drawback, duty entitled passbook scheme as per the export policy of the Government of India, in para 3 of the writ petition it is stated that the petitioner had exported readymade

garments from Moradabad from the month of June to August, 1998 as per statement enclosed as Annexure 1 to the writ petition and they had realised the payments through the bank copy of bank certificates of export and realisation is Annexure 2 to the writ petition. The petitioner had given a notice to the respondent for release of DEPB licences and drawback cheque. The petitioner has alleged in para 7 of the writ petition that he has exported goods worth of 32,70,226 dollar and earned foreign exchange for the country but respondents are deliberately without any reason not issuing drawback cheque to which the petitioner is entitled.

4. A counter affidavit has been filed and in view of the allegation in paras 5.13 to 25, 28, 29, 32 and 34 of the counter affidavit we are not inclined to interfere under Article 226 of the Constitution in this case. In these paragraphs it has been stated that there is prima facie evidence that the petitioner was exporting old and used cloths in the garb of readymade Garments at highly inflated prices to avail excess duty drawback and that they are sending containers of old and used cloths in the garb of readymade garments mainly declaring them as shirts and skirts to which it is not entitled enquiries are going on in this connection. A perusal of paragraphs 6 to 23 of the counter affidavit disclose that the customs authorities had made enquiries and found prima facie that the allegations against the petitioner was correct and now adjudication proceedings are pending, in para 24 of the counter affidavit it is stated that the Commissioner, Customs and Central Excise, Meerut has issued show cause notice, dated 11-3-1999 and hence the petitioner should reply to the show cause notice. In para 28 of the counter affidavit it is stated an enquiry has been contemplated against the petitioners past exports regarding quality of goods exported by the petitioner. In para 29 of the counter affidavit it is stated that the petitioner in connivance with the officers of the department had succeeded in clearing goods about which departmental enquiry is pending and two officers of the rank of Superintendent and Inspector are under suspension. In para 13 of the counter affidavit it is stated that on 15-9-1998 a container was opened before the panchas. All the cartons were off loaded and on examination it was found that instead of shirts and skirts as declared in shipping bill No. 5243, dated 11-9-1998 there were old used soiled and torn garments which were totally contrary to the description given in the shipping bill. Similar discrepancy was found in other constrained also as mentioned in details in para 13 of the counter affidavit in para 16 it is stated that premises of M/s. Sukumar Chemical Ltd. and agent to Leather Components Ltd. were searched but no records or files were found. There samples from the said cartons were also taken and sealed the pence has (sic) inquiries were made as head office of the petitioner which revealed that this firm does not exist at the above address. In para 17 of the counter affidavit it is stated that certain irregularities regarding certain bills have been found for huge amounts. Since proceedings are pending regard in this matter we are not inclined to interfere in writ jurisdiction. Moreover we are satisfied that the petitioner has not come with clear hands in view of the various allegations in the counter affidavit. Thus there

is no force in this petition and the writ petition is dismissed.