(2015) 03 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) 2344/2015

Alstom India Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:
Foreign Trade (Development and Regulation) Act, 1992 — Section 13, 15

Citation : (2015) 319 ELT 434 : (2015) 33 GSTR 280

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

Advocate : Sujit Ghosh, Kanupriya Bhargava and Pragya Awasthi, for the Appellant; Sanjeev Narula, CGSC and Ajay Kalra, Advocates for the Respondent

Judgement

Rajiv Shakdher, J.

CM No. 4201/2015 and 4202/2015 (Exemption)

1. Allowed subject to just exceptions.

W.P.(C) 2344/2015 and CM No. 4200/2015 (stay)

2. Issue notice to the respondents.

3. Mr. Narula accepts notice on behalf of the respondents. Mr. Narula says that he will argue the matter based on the material placed on the record.

4. This is a second round of litigation for the petitioner. The petitioner had approached this court earlier by way of a writ petition, which was numbered as : WP(C) 1331/2015. The said writ petition was disposed of vide order dated 11.02.2015.

4.1 After alluding to the facts arising in the case, an operative direction was issued to the effect that the respondents will examine the case of the petitioner for refund of Terminal Excise Duty (in short TED) and pass suitable orders.

4.2 Since, the facts are, broadly, indicated in the order dated 11.02.2015, passed in WP (C) 1331/2015, the same need not be repeated herein.

4.3 I may only briefly note that it is the petitioner''s case that at the behest of the sub-contractor i.e., Bharat Heavy Electricals Ltd. (BHEL), it had supplied boiler components to National Thermal Power Corporation Ltd. (NTPC), under International Competitive Bidding (ICB).

4.4 Admittedly, the TED was paid by the petitioner. The petitioner seeks refund of the said TED as, it has not sought exemption of TED under the Central Excise Act, 1944.

4.5 The respondents seek to resist the refund based on the provisions of paragraph 8.3(c) of the Foreign Trade Policy 2009-2014 (in short the FTP). It is the respondents'' stand that since the supplies of boiler components made by the petitioner under ICB are deemed exports, it could have applied for exemption and having not done so, its application for refund is not sustainable.

4.6 In the impugned order dated 24.02.2015, Foreign Trade Development Officer after setting out briefly the facts of the case and adverting to paragraph 8.3(c) of the FTP has rejected the claim of refund on the ground that deficiencies contained in the application, were not cured.

4.7 Strangely though, the officer concerned in the impugned order has made no reference to the observations of this court, made in paragraph 16 and 17 of the order dated 11.02.2015, passed in WP(C) 1331/2015.

5. Mr. Narula, who appears for the respondents, says that an appeal is maintainable against the impugned order. Mr. Narula also relies upon the impugned order to contend that even on merits no relief can be granted to the petitioner.

6. I tend to disagree with the submissions of Mr. Narula, both on the ground of maintainability as well as on merits. As pointed out by the learned counsel for the petitioner, an appeal under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 (in short FTDRA) is maintainable in respect of an order passed by the adjudicating authority under Section 13 of the FTDRA. Section 13, however, adverts to the power of the adjudicating authority to impose penalty or pass an order of confiscation.

6.1 Quite clearly, the impugned order does not fall within the ambit of Section 13 of the FTDRA. Therefore, the said objection is untenable.

6.2 Mr. Narula also relies upon an order of the Single Judge dated 27.03.2014, passed in M/s. Motherson Sumi Electric Wires Vs. Union of India and Ors. to support this submission. The said order of the learned Single Judge is a brief direction to prefer an appeal. A perusal of the order would show that, quite clearly, the provisions of Section 13 of FTDRA were not brought to the notice of the learned Judge. Besides, in that case, the court was considering whether the petitioner before it was an aggrieved person.

6.3 In so far as the merits are concerned, I may only reiterate the observations made by me in paragraph 16 and 17 of the order dated 11.02.2015. The same are extracted hereinbelow :-

"..16. Insofar as prayer (b) is concerned, which pertains to the applicability of circular dated 15.03.2013, according to me, the said circular does not need to be struck down. The circular is based on an administrative interpretation of the FTP. The FTP, according to me, is clear, that where exemption has been availed of, no refund is payable to such an applicant.

17. As indicated above, the common case of parties before me, is that, exemption was not availed of by the petitioner, instead the petitioner ended paying TED. Therefore, the petitioner had two options: First, to seek refund of the Excise Duty from the Excise Department. Second to seek refund from the respondent herein. The petitioner has chosen the latter. The FTP, as it then existed, did not de-bar the petitioner from seeking a refund from one of the two departments, subject to fulfilment of other conditions..."

6.4 In this case the admitted position, is that, the petitioner has not availed of exemption from TED. Therefore, quite logically, the refund of TED, cannot be denied.

6.5 I may only note the other objection taken in the impugned order, is that, there is a deficiency in the application, in as much as, the declaration made by NTPC Ltd. was not on its letterhead; an objection which is completely untenable. The document, which is appended at pages 49-50 of the paper book, clearly shows that the said document bears the stamp of the NTPC Ltd. The document declares that Cenvat Credit/Rebate under the Central Excise Rules has not been availed by NTPC Ltd. Therefore, this objection cannot stand in the way of the petitioner getting refund in the matter.

7. In these circumstances, the impugned order is set aside. The respondents are directed to refund the TED to the petitioner. The needful will be done as expeditiously as possible though no later than two weeks from today.

7.1 I may only note that the officer who has passed the impugned order has acted in a manner, which is least expected of a Government officer, while exercising powers of adjudication. Adjudicating officer is required to pay heed to the orders of superior courts. In case a Statutory Authority is aggrieved by an order passed by a court, they are entitled to take recourse to an appropriate legal remedy and not ignore the order of the court. Having regard to the approach adopted in the matter, this order will be placed before the superior officer of the officer concerned so that he is counseled appropriately.

7.2 At this stage, the petitioner seeks costs of the proceedings. In my opinion, in this particular case, the petitioners are entitled to costs, in view of the manner in which the respondents have acted in the matter, which has resulted in the petitioners having to approach the court for the second time. The respondents will also pay costs of Rs.10,000/- to the petitioner. The costs will be paid within the same time frame.

8. With the aforesaid observations in place, the captioned petition and the pending application are disposed of.

