(2013) 06 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 2569 of 2013

Alstom India Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2014) 26 GSTR 445

Hon'ble Judges : Sonia Gokani, J;Mukesh R. Shah, J

Bench : Division Bench

Judgement

Mukesh R. Shah, J.—Heard Shri Sujit Ghosh, learned counsel with Ms. Kanupriya Bhargava, learned advocate with Shri Maulik Nanavati, learned advocate appearing on behalf of the petitioner and Shri Harin Raval, learned senior advocate instructed by Shri P.S. Champaneri, learned Assistant Solicitor General of India appearing on behalf of the Union of India and the respondents-Department. By way of this petition under article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

(a) To issue a writ order or direction setting aside the impugned order dated March 21, 2011 passed by respondent No. 3 and the order dated April 13, 2012 passed by respondent No. 4 in appeal and instructions contained in the minutes dated March 15, 2011 and September 9, 2011 of the Policy Interpretation Committee as being illegal, arbitrary, contrary to the Foreign Trade (Development and Regulation) Act, 1992 and violative of articles 14, 19(1)(g) and 300A of the Constitution of India;

(b) To pass an order directing the respondent authority to disburse the amount claimed by the petitioner towards the duty drawback along with the interest.

2. Number of submissions have been made by the learned counsel appearing on behalf of the respective parties with respect to the powers of the Joint Director General of Foreign Trade in reviewing and/or recalling their earlier decisions of approving the duty drawback and even with respect to eligibility of duty

drawback by the petitioner under the relevant Export Import Policy/Foreign Trade Policy. It is also contended on behalf of the petitioner that even the subsequent decision of the Joint Director General of Foreign Trade dated March 21, 2011 is against the principles of natural justice. It is also the case on behalf of the petitioner that even the decision of the Director General of Foreign Trade which has been communicated vide communication dated April 13, 2012 is also a non-speaking order. It is the specific case on behalf of the petitioner that as such the said decision dated April 13, 2012 is by the officer/authority, who decided the representation of the petitioner and therefore, the same is against the principles of natural justice.

3. In view of the aforesaid undisputed facts, it was suggested by Shri Raval, learned counsel appearing on behalf of the respondents that the Director General of Foreign Trade is ready to give fresh personal hearing to the petitioner and take an independent decision afresh after considering the representation that may be made by the petitioner. It is submitted that the Director General of Foreign Trade shall take a fresh decision on the representation to be made by the petitioner and after giving an opportunity of personal hearing to the representation of the petitioner with open mind and independently and without in anyway being influenced by the earlier decisions. Shri Raval, learned counsel appearing for the respondent has submitted that the petitioner shall be informed with respect to the date of the personal hearing within a period of one week from today, however, the same personal hearing shall be afforded within a period of four weeks from today.

4. Shri Ghosh, learned counsel appearing on behalf of the petitioner has stated that the petitioner shall submit a fresh detailed representation to the Director General of Foreign Trade in support of their claim that they are entitled to and eligible for duty drawback with respect to the goods in question under the relevant Export Import Policy/Foreign Trade Policy. However, has requested to make suitable observation that the Director General of Foreign Trade may take a fresh decision on the representation to be made by the petitioner against the decision of the Joint Director General of Foreign Trade dated March 21, 2011 and also with respect to the eligibility of duty drawback with respect to the goods in question by the petitioner independently with open mind and without in anyway being influenced by their earlier decisions inclusive of decision of the Policy Interpretation Committee. It is requested to direct the Director General of Foreign Trade to take a fresh decision at the earliest as the amount of duty drawback involved is a huge amount. He has also requested to direct the Joint Director General of Foreign Trade/Director General of Foreign Trade to release some amount provisionally.

5. Shri Raval, learned counsel appearing for the respondents has no objection if suitable observations as requested by the learned counsel for the petitioner are made, however, has opposed the prayer of the petitioner to release some amount towards duty drawback provisionally. He has stated at the Bar that fresh decision

shall be taken by the Director General of Foreign Trade within a period of two weeks from the date of personal hearing (which shall be within four weeks from today) and as the dispute is pending since 2012 and the petition has been filed in 2013, it is requested not to issue any direction to release any amount towards duty drawback provisionally.

6. Having heard learned counsel appearing for the respective parties and considering the aforesaid facts and circumstances and the stand taken by the learned counsel appearing for the respective parties under the instructions from their respective clients, recorded hereinabove, without further entering into the merits of the case and/or expressing anything on merits in favour of either party, the present special civil application is disposed of with the following directions and observations:

(i) Let the petitioner submit fresh detailed representation against the decision of the Joint Director General of Foreign Trade as well as in support of their case that they are eligible to get duty drawback with respect to the goods in question under the relevant Export Import Policy/Foreign Trade Policy and all other grounds which may be available to the petitioner, to the Director General of Foreign Trade within a period of 15 days from today.

(ii) In the meantime, the Director General of Foreign Trade to inform the petitioner with respect to the date of personal hearing, which shall be within a period of four weeks from today, and such communication shall be made within a period of one week from today meaning thereby the personal hearing shall be within a period of four weeks from today.

(iii) Thereafter, the Director General of Foreign Trade to pass a fresh order on such representation in accordance with law and on merits independently and with open mind and without in anyway being influenced by the earlier orders and pass a speaking order thereafter within a period of two weeks from the actual date of personal hearing and communicate the said decision forthwith thereafter.

(iv) It is also clarified that all the contentions and the defences which would be available to the respective parties, more particularly the petitioner, are kept open to be dealt with and considered by the Director General of Foreign Trade in accordance with law and on merits for which this court has not expressed anything in favour of either party.

(v) It goes without saying that in case of any decision adverse to the petitioner, it will always be open for the petitioner to challenge the same before appropriate court/forum, which shall be considered in accordance with law and on merits.

With this, the present special civil application is disposed of direct service is permitted.

