(2007) 03 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No. 31887 of 2004 (GM-RES)

Amritsar Swadeshi Woolen Mills APPELLANT

Vs

Addl. D.G.F.T., M.C. and I. (D.C.) RESPONDENT

Date of Decision : 27-03-2007

Acts Referred:

Citation : (2013) 292 ELT 183

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : G.A. Brahmadeva for G. Sampath, for the Appellant; B. Papegowda, Addl. CGSC, for the Respondent

Final Decision : Allowed

Judgement

Jawad Rahim, J.—The petitioner claims to be a partnership firm engaged in manufacture, sale and export of garment with its industry at Yeshwanthpur within the territorial limits of Bangalore District. It manufactures various items of garment for retail, wholesale, export made out of textile as also wool. Petitioner''s products have high sale potentiality abroad and the petitioner has been exporting them. It had registered itself for export and import and sought benefit of the Government policy to encourage such activity.

2. The Government of India, Ministry of Commerce announced several schemes of duty exemptions/remission by which substantially the fee for import of inputs required for export production became permissible. To monitor such activity and to channelise the benefit of the scheme the Ministry introduced (Duty Entitlement Pass Book Scheme) (DEPB) which was intended to neutralize the incidence of customs duty on the import content of the export products. It was provided by way of grant of duty credit against the export product.

3. This scheme envisaged that exporter may apply for credit at specified percentage of FOB value of exports made in freely convertible currency. The credit is available against such export product and at such rates as may be

specified by the Director General of Foreign Trade which may be notified by public notice issued for import of raw materials, intermediates, components, parts, packing material etc. The licence was called DEPB licence valid for a period of 12 months from the date of issue.

4. The Director General of Foreign Trade who was bestowed with the power at para 7.25 (present policy 4.3.1, 2002-07 amended up to 31-3-2002) issued public notices from time to time prescribing DEPB rates and value of the goods exported vide Annexure-A. Textile items were also notified as eligible for duty exemption under the scheme appendixes to Appendix 28A of the Hand Book of Procedures included in its list woolen gents jackets with or without lining as one of the items eligible for such scheme when exported. Copy of it is found at Annexure-B.

5. On 28-2-2000, the Textile Committee vide letter No. TC(BAG)CN/274/2000 included garments made of cotton, wool, silk, synthetics and vegetable fibres as textile and thus, these items fell under the textile category and consequently eligible for benefits of DEPB scheme. In the circumstances, the petitioner which was exporting gents jackets secured orders and dispatched two consignments vice (1) 20149 on 3-11-1998 and (2) 21271 on 14-12-1998 and applied for licence which was duly granted to it by the authorities concerned.

6. As per the said licence, petitioner was issued DEPB credit for Rs. 4,32,000/- for the item described at Serial No. 17 in the list of textiles under Appendix 28A vide Annexure-D. Despite this beneficial provision, the Joint Director General of Foreign Trade, Bangalore - the second respondent issued a show-cause notice on 16/17-11-1999 to the petitioner vide Annexure-E, to show cause why the DEPB licence issued on 7-9-1999 shall not be cancelled. The petitioner answered the show-cause notice with acceptable explanation and reiterated that the produce exported by it was well defined under Serial No. 17 of Appendix 28A. But the second respondent did not accede to the request of the petitioner and decided to cancel the licence referring to the general instructions issued by the Department on 1-4-1999 indicating that the DEPB rates given for the various types of garments would not cover silk as well as woolen garments unless specifically mentioned in DEPB description. On that basis, the authorities held that the petitioner was not entitled to the benefit under the scheme as also the licence issued on 7-9-1999 and cancelled the same by the impugned order Annexure-G dated 29-2-2000/9-3-2000. Petitioner being aggrieved by the said order preferred an appeal before the first respondent u/s 15(1)(b) of the Foreign Trade (Development & Regulation) Act, 1992. That appeal failed as the appellate authority confirmed the order Annexure-G vide its order at Annexure-H.

7. Again the petitioner preferred a revision to the Government which was also a futile exercise. The revision application was returned by the order Annexure-L. Thus, being aggrieved by such orders, the petitioner has sought issuance of writ in the nature of certiorari to quash Annexures-G, H & J.

8. Learned counsel for the petitioner would point out that the DEPB scheme emphasized only two circumstances to get the credit:

(i) The Duty Entitlement Pass Book was to neutralize the incidence of basic customs duty on the import content of the export product. The neutralization shall be provided by way of grant of duty credit against export product and duty credit shall be calculated by taking into account the deemed import content of the said product as per standard input/output norms and determine the basic customs duty payable on such deemed imports. The value additional achieved by export of such product shall be taken into account while determining the rate of duty credit under the scheme. This is elaborately dealt with in Para 7.25 of Export and Import Policy 1997-2002. Based on this policy of the Union of India, the Duty Entitlement Pass Book scheme was formulated and as per that scheme various items were listed to come within its ambit. The petitioner''s products finds place at Serial No. 17. The petitioner had exported its products in the months of November and December, 1998 and report in this regard was submitted to the authorities concerned who issued the DEPB licence to the petitioner on 7-9-1999. In this manner, the petitioner had exercised right to avail the benefit of DEPB scheme and there could be no objection to it from the respondents. Despite these facts, Annexure-G came to be issued by the second respondent on the premise that the general instructions issued took out of the purview of the scheme the garments which are made of silk and wool. In this view, the benefit extended to the petitioner was not sustainable and needed withdrawal. In such a case, the licence was cancelled by Annexure-G.

9. Learned counsel for the petitioner vehemently contended that when the fallacy in the approach was highlighted in the appeal preferred before the first respondent, he merely reiterated the reasoning of the second respondent in Annexure-G and championed the cause saying that the authorities needed to follow the general instructions and hence, the order suffers from no infirmity. Even in the revision preferred to the Government, the relevant contentious issues found no favour and without assigning any reasons, the revision has also been returned. This rendered the petitioner remediless and in the absence of any efficacious remedy, the writ is the only remedy.

10. While the learned Additional Central Government Standing Counsel for the respondents would contend that the benefit of DEPB scheme is admissible only to such category of goods which are covered under the policy. Item 17 to which the petitioner claims entitlement has been further described in the general instructions issued on 1-4-1999 and under such general instructions, the DEPB scheme for various types of garment would not cover silk as well as woolen garments unless specifically mentioned in DEPB description. Since no such specific description is found in the DEPB description and item 17 is non-descriptive, the petitioner''s products are therefore brought out of the ambit of the scheme and are not entitled to the credit benefit.

11. I have heard both sides. Though the narration of facts is little elaborate, the

points that arise for consideration are only two fold:

(i) Whether the general instructions issued are prospective in application or retrospectively effective?

(ii) Whether the general instructions defeat the Export and Import Policy of 1997-2002 as described at Para 7.25 and as to whether the benefits under the Duty Entitlement Pass Book scheme is inhibited by general instructions or is independent in its operation?

12. Firstly it is noticed that the export of garments effected by the petitioner was on the following dates:-

3-11-1998 and 14-12-1998

The petitioner applied for licence under the DEPB scheme which was granted to it on 7-9-1999. The general instructions came to be issued on 1-4-1999 whereas, the Public Notice No. 5 (PN)97-2002 is dated 8-4-1997 titled ''Duty Entitlement Passbook Scheme - Entitlement Rates Announced''. As per that pubic notice of the Ministry, the product produced by the petitioner found place at item 17. The further general instructions at Para 15.15 contain a footnote which reads thus:

Further, wherever the policy provisions have been modified to the disadvantage of the exporters, the same was not to be applicable to the consignments already handed over to the customs for examination and subsequent exports up to the date of the public notice.

13. This would mean that any change or modification in the policy provisions shall not have retrospective effect but will be prospective in its operation. Secondly, if such a policy provisions has been modified to the disadvantage of the exporters, they shall not be effective as regards the consignments already handed over to the customs and subsequently exported upto the date of public notice.

14. In the instant case, consignments of the petitioner left its hands and was exported on 3-11-1998 and 14-12-1998 respectively that was much before the general instructions were issued on 1-4-1999 whereby the drastic change in the policy was effected describing certain items to be excluded. This being to the disadvantage of the exporter would not affect the export already effected by the petitioner. In this view of the matter, the benefit which has accrued to the petitioner of the policy prior to general instructions on 1-4-1999 was available to the petitioner and any deprivation of it would indicate discrimination and depriving it of the benefit which was granted to similarly placed firms hence the policy decision is unsustainable. Thirdly, as there is no dispute that the petitioner''s case was examined by the authorities and a licence was issued to it on 7-9-1999 for the export already effected indicates that there was no circumstances made out to cancel the said licence.

15. In this view of the matter, Annexure-G is certainly unsustainable. When the

same was challenged before the first respondent, the appeal also has failed due to non-consideration of the grounds urged by the petitioner and due to non-application of mind by the first respondent to the vital aspects that had arisen for consideration. Consequently, the order passed in appeal Annexure-H must also fall. The Government which was approached by the petitioner to revise the orders passed by the respondents 1 and 2 has also failed to examine the grounds urged and analyse the entitlement of the petitioner in the correct perspective it deserved. As a result of that improper exercise by the Government, the revision petition of the petitioner has also been returned unconsidered.

16. In the circumstances, both the orders at Annexures G & J being unsustainable are liable to be quashed. Since there is clarity in the policy of 1997-2002 and the scheme framed thereunder which envisages benefit should reach to the exporters in the circumstances enumerated therein and as the petitioner falls into one of the categories in law entitled to the said benefit which otherwise has been sought to be deprived by Annexure-G. Hence, the petitioner is entitled to the benefit of the said DEPB scheme and the general instructions issued and the goods exported by him on 3-11-1998 and 14-12-1998 are unaffected by the administrative instructions issued on 1-4-1999. Therefore, quietus is given to this issue accepting the case of the petitioner that it is entitled to the benefit of the said scheme. In the result, rule is made absolute. The writ petition stands allowed The order passed by the respondent No. 2 bearing No. 07/79/051/009993/AM2000/1014, dated 29-2-2000/9-3-2000 vide Annexure-G and the order of the first respondent dated 23-9-2003 bearing No. 11/4/00-01/ECA-1 vide Annexure-J, are quashed. In the circumstances, no order as to costs.