
(2011) 01 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) 9987 of 2006

Anand Auto Craft Centre

APPELLANT

Vs

The Regional Manager Engineering Export Promotion Council

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 270 ELT 195

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Ashok Anand, Managing Director of Chakradar Auto Udyog Pvt Ltd, for the Appellant; Amit S. Chadha Sandeep Mahapatra and Mirza Kayesh Begg, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—Both petitions involved more or less similar issues and are consequently being disposed of by a common judgment.

2. The facts in WP (C) 9987 of 2006 are that the Petitioner, a proprietary concern and a merchant exporter exported various automotive components during the year 1992-94. It is stated that by virtue of the said export, the Petitioner became entitled to claim benefit under the International Price Reimbursement Scheme ("IPR Scheme") formulated by the Government of India in 1981 to compensate manufacturers and exporters of automotive components with respect to the differential in price of various raw materials like steel, alloy steel, etc as they existed internationally and in India. Under the IPR Scheme, a merchant exporter was eligible to claim price reimbursement against consumption of specified raw material in the engineering goods exported from India. A claim had to be submitted by the merchant exporter in the manner prescribed by the Hand Book issued by the Respondent Engineering Export Promotion Council ("EEPC"). The Petitioner submitted claims amounting to Rs. 25,88,304 to the EEPC during the year February 1992 to February 1994.

3. It is stated that in 1994, the Central Bureau of Investigation ("CBI") registered a criminal case against Mr. Yashpal Anand, the late husband of Mrs. Usha Anand who is the present proprietor of the Petitioner firm M/s. Anand Auto Craft Centre. Although the impugned claims did not relate to the years for which the CBI sought to prosecute Mr. Yashpal Anand, the EEPC did not disburse the amount under the IPR Scheme to the Petitioner on account of the pendency of the said criminal case. It is stated that despite representations made thereafter, the amount was not released to the Petitioner.

4. The facts in WP (C) 8248 of 2007 are more or less similar. Petitioner No. 1 is a company duly registered with the EEPC. It lodged claims under the IPR Scheme for the export of automotive components made by it. Petitioner No. 2, Ashok Anand, is the Managing Director of Petitioner No. 1 and proprietor of M/s. Ashoka Overseas. He is the brother of Mr. Yashpal Anand. The claims of the Petitioners, as of other similarly placed claimants, were not cleared by the EEPC on account of the pendency of the criminal case instituted against them by the CBI.

5. By a judgment dated 22nd June 2001, the Petitioners in WP (C) No. 8248 of 2007 as well as other similarly situated merchant exporters were acquitted in criminal cases registered against them. In the case of Mr. Yashpal Anand, he had filed a criminal miscellaneous application in this Court in which a stay was granted of the proceedings in the trial court. Later, Mr. Yashpal Anand withdrew the criminal miscellaneous application. However, since his case had been delinked from the cases of other merchant exporters, no formal order of acquittal was passed in his case. On 8th February 2003, Mr. Yashpal Anand expired and the criminal trial against him abated. A consequential order to that effect was passed by the trial court on 18th February 2003.

6. It is stated that pursuant to their acquittal, one of the merchant exporters Mr. Satish Anand filed a Civil Writ No. 6895 of 2001 praying for appropriate directions to the EEPC to verify the claims under the IPR Scheme. Chakradar Auto Udyog Pvt. Limited and Mr. Ashok Anand [the Petitioners in Writ Petition (Civil) No. 8248 of 2007] filed Writ Petition (Civil) No. 6680 of 2001 in this Court claiming similar relief. By separate but identical orders dated 21st April 2003, a learned Single Judge of this Court disposed of the petitions and directed that the EEPC should verify the claims in accordance with the schemes framed under the Exim policy within two months and pay the amounts to which they may be found entitled on such verification.

7. Subsequent to the judgment dated 21st April 2003, the EEPC wrote a letter dated 17th June 2003 to the Directorate General of Foreign Trade ("DGFT"), seeking clarification whether the payment claims pending with the EEPC could be given effect to and the amounts released to the claimants. The EEPC also filed CM No. 7106 of 2003 in the disposed of W.P. (C) No. 6680 of 2001 seeking extension of time to comply with the order dated 21st April 2003. The said application was disposed of by an order dated 25th June 2003 by the learned Single Judge of this Court extending the time for verification of the claims by

another two months.

8. The further application being CM/RA No. 8357 of 2003 filed by the EEPC before the learned Single Judge stated that since the Petitioners had not furnished requisite information for their claims, they could not be verified and, therefore, further extension was sought to comply with the order dated 21st April 2003. The said application was disposed of by the learned Single Judge by an order dated 21st November 2003. The operative portion of the order reads as under:

The claims have already been verified by Respondent No. 1 as is evident from the letters appearing from pages 12 to 44 of the paper book. The Respondent cannot now deny the benefits to the Petitioner on the ground that certain other documents which are required under a policy framed in the year 1996 or any time thereafter are required for purposes of verification of the claims of the Petitioner. Prima facie it appears to the Court that the Respondent cannot deny the benefits to the Petitioners on the basis of a policy which had been framed after the Petitioners had become entitled to the benefits under the then existing policy and the policy framed in 1996 cannot have any retrospective effect. I am, therefore, not inclined to agree with the Respondent that any document for purposes of verification of the Petitioner's claim is required to be submitted by the Petitioner. I accordingly direct the Respondents to verify the claim of the Petitioner on the basis of the documents available with them within four weeks from the date of this order. With these observations, the application stands dismissed.

9. Aggrieved by the orders dated 21st April 2003 and 21st November 2003, the EEPC filed Writ Appeal Nos. 23 of 2004 and 48 of 2004 before the Division Bench of this Court. By an order dated 27th February 2004, the Division Bench directed the EEPC to deposit a sum of Rs. 23,97,930/- with the Registrar General as far as the claim of Chakradhar Auto Udyog Pvt. Limited was concerned. The amount was directed to be invested in a short term fixed deposit with a nationalised bank. Other similar appeals were filed in the cases of the other merchant exporters. 10. Meanwhile, Mrs. Usha Anand filed Writ Petition (Civil) No. 4992 of 2003 claiming that the case of Mr. Yashpal Anand is no different from that of the other merchant exporters and that consequently she was entitled to the sum of Rs. 25,88,304/- from the EEPC under the IPR Scheme. This petition and the above appeals came up for hearing on 28th January 2005 before the Division Bench. By separate orders, the Division Bench dismissed the appeals and allowed W. P. (C) 4992 of 2003. The Division Bench directed the EEPC to take necessary decision after verifying the claims of the Petitioner within three months. In para 4 of the said order, it was observed as under:

Learned Single Judge has specifically observed that the claims will be settled on verification. It goes without saying that verification has to be in accordance with law and would include a right to the Appellant to seek clarification from the writ Petitioners.

11. By a letter dated 6th April 2005, the EEPC required the Petitioners to submit the following documents:

- (a) Customs Certified Invoices;
- (b) Bank Realization Certificate;
- (c) Customs Certified Packing List, and;
- (d) Test Certificate

12. The above letter was replied to by the Petitioners on 11th April 2005 stating that "we have no documents other than the documents that were submitted to you as required under the IPR Scheme." A further demand for the said documents was made by the EEPC by its letter dated 18th April 2005. The Petitioners again replied on 21st April 2005 maintaining that the High Court had not directed the Petitioners to submit any document and that it was for the EEPC to take a decision on their claims.

13. On 25th April 2005, the EEPC wrote a detailed letter rejecting the claims of the Petitioners. Inter alia, it was pointed out that only 6 of 33 Custom Certified Invoices were available. As regards the Bank Realisation Certificate, only 21 certificates had been received whereas the total claim was for 33 invoices. Even as regards the available 6 Customs Certified Invoices, only 4 Bank Realization Certificates had been received. Without the Customs Certified Packing List, the actual weight of each article in the claim application form could not be verified and in the absence of such documents, the EEPC could not make the payments. Finally, in the absence of Test Certificates, which were required for cross-verification of the export documents, the claims could not be processed.

14. The Petitioners then filed Contempt Petitions Cont. Cas. (C) Nos. 394-395 of 2005 which, however, came to be dismissed on 16th November 2005 with liberty to the Petitioners to seek appropriate remedies for any substantive grievance. The SLP No. 7351 of 2006 against the above order was dismissed by the Supreme Court on 5th May 2006. Thereafter the present petitions were filed.

15. Mr. Ashok Anand, the Managing Director of Chakradar Auto Udyog Pvt. Limited appeared in person representing both sets of Petitioners. According to him, their claims had already been verified by the EEPC and passed for payment. The only reason for not releasing the amounts was the pendency of the criminal case. With the Petitioners being acquitted by the criminal court, there remained no impediment in the release of the payments. Mr. Anand submitted that the EEPC was deliberately misconstruing the order passed by the learned Single Judge of this Court on 21st April 2003 which had attained finality. Even the subsequent order dated 21st November 2003 did not permit the EEPC to keep asking for further documents. The EEPC had only been permitted to verify the documents already submitted to it by the Petitioners. It is submitted that by repeatedly asking for documents the EEPC was frustrating the order dated 21st April 2003. The Petitioners had been waiting for several years for the release of

amounts. The documents which were in the possession of the Petitioners had been taken away by the CBI and, therefore, they could not be expected to produce any further documents. It is submitted that the EEPC was not even prepared to release the pro-rata payment for the six Customs Certified Invoices available with it. It was submitted that the EEPC was acting arbitrarily in declining to make payments despite the Petitioners having submitted all the documents.

16. Appearing for the EEPC, Mr. Amit S. Chadha, learned Senior counsel submitted that the requirements under the IPR Scheme read with the Handbook were specific and unambiguous. It was mandatory for the claimant to give a whole set of documentation including the Customs Certified Invoices, Test Certificates, Customs Certified Packing Lists and the Bank Realisation Certificates. Admittedly, the Petitioners could not produce the above documents despite repeated requests made by the EEPC. Even as regards the available six Customs Certified Invoices, payments could not be made till such time the corresponding Bank Realisation Certificates, Customs Certified Packing Lists and Test Certificates were not produced.

17. The above submissions have been considered by this Court. A perusal of the IPR Scheme together with the Handbook makes it abundantly clear that without a claimant producing the required documentation, it would not be possible for the EEPC to process the claim. It appears to this Court that the further application CM/RA No. 8357 of 2003 filed by the EEPC, which led to the order dated 21st November 2003 passed by the learned Single Judge, was necessitated by the fact that as on that date, the complete documentation for processing the claims in each of the cases had not been furnished to the EEPC. The order dated 21st November 2003 indicates that the learned Single Judge did not accept this position. However, while dismissing the appeals, the Division Bench, in para 4 of its order dated 28th January 2005, observed that verification had to be done by the EEPC in accordance with law and that this "would include a right to the Appellant [i.e. EEPC] to seek clarification from the writ Petitioners." Thereafter by its letters dated 6th April 2005 and 18th April 2005, the EEPC sought clarification on whether any other documents were available with the Petitioners. The Petitioners clarified that they did not have any further documentation.

18. It is not possible for this Court to agree with the contention of the Petitioners that since the EEPC had already found the claims to be in order, it had to necessarily issue orders releasing the payment. There cannot be any estoppel against the EEPC in respect of its letter dated 17th June 2003 to the DGFT seeking clarification on whether amounts could be released to the claimants. Ultimately, what is required to be seen is whether on the basis of the documents made available to it the EEPC, it could clear the claims of the Petitioners for payment. As already noticed, the order passed by the Division Bench on 28th January 2005 while dismissing the appeals of the EEPC permitted it to seek

further clarification while verifying the claims of the Petitioners on the basis of the documentation available with it. The Petitioners were repeatedly asked by this Court as to whether any of them had the complete documentation in respect of their claims as required by the EEPC and in particular, whether in respect of each of the claims, the Customs Certified Packing Lists, the Test Certificates, the Bank Realization Certificates and the Customs Certified Invoices were available. While the Customs Certified Invoices were stated to be available for six of the transactions, there were no Customs Certified Packing Lists available for any of them. Likewise, the Bank Realization Certificates were available for only a few of them. In other words, not even one of the claims contained the complete set of the above four documents.

19. In the circumstances, this Court is of the view that the refusal by the EEPC to clear the Petitioners' claims for payment in terms of the IPR Scheme cannot be said to be either arbitrary or unreasonable. Unless the complete documentation in terms of the IPR Scheme was made available to the EEPC by the Petitioners, they could not expect the EEPC to clear their claims.

20. Consequently, this Court finds no merit in either of the petitions and they are dismissed as such with no order as to costs.