

(2012) 09 DEL CK 0180
In the Delhi High Court
Case No : LPA No. 590 of 2011

Chakradar Auto Udyog Pvt. Ltd. and Another	APPELLANT
Vs	
Engineering Export Promotion Council and Others	RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 09 DEL CK 0180

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Lajwinder Singh, for the Appellant; Amit S. Chadha, with Mr. Kunal Sinha and Mr. Vijay Kumar and Mr. Gaurav M. Liberhan, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This Intra-Court appeal impugns judgment dated 7th January, 2011 of the learned Single Judge dismissing W.P.(C) No. 8248/2007 preferred by the appellants. The matter has a chequered history. The appellants are merchant exporters who had in or about the year 1992-94 exported automotive components. They claim to have become entitled to, by virtue of the said export, benefit under the International Price Reimbursement Scheme (IPRS) formulated by the Government of India in the year 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 IPRS, 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 in the Hand Book issued by the respondent Engineering Export Promotion Council (EEPC). While the appellant no.1 claims a sum of Rs. 25,45,320/- to be so due to it under the scheme, the appellant no.2 claims a sum of Rs. 1,88,839/-. It appears that

certain criminal cases in connection with the said exports had been registered against the appellants but the appellants were acquitted on 22nd June, 2001 and which order of acquittal was upheld till this Court. It is the case of the appellants that the payments aforesaid due to them under the IPRS were withheld owing to the pendency of the prosecution and upon acquittal they became entitled thereto. The appellants first filed W.P.(C) No. 6680/2001 in this Court seeking the said payments. The said writ petition was disposed of on 21st April, 2003 with a direction to the respondents to verify the claims and to pay the amount to which the appellants may on such verification be found entitled. However the respondent EEPC filed an application in this Court stating that the appellants had not furnished the requisite information for their claims and in the absence whereof the claims could not be verified. The said application was disposed of vide order dated 21st November, 2003. The learned Single Judge, from the documents filed by the appellants, concluded that the claims of the appellants had already been verified by the EEPC and EEPC could not thus deny the benefits under the IPRS to the appellants on the ground that certain documents were required for verification. EEPC was accordingly directed to verify the claim on the basis of available documents

2. Aggrieved from the aforesaid orders, EEPC filed Writ Appeals No. 23/2004 and No. 48/2004. The Division Bench vide interim order dated 27th February, 2004 directed EEPC to deposit a sum of Rs. 23,97,930/- in this Court. The said appeals were however dismissed, but observing that since the learned Single Judge had directed claims to be settled on verification and which verification was to be in accordance with law and would include a right of EEPC to seek clarification from the appellants.

3. The respondent EEPC thereafter required the appellants to submit various documents. The appellants however replied stating that they had no more documents than which had been submitted.

4. The respondent EEPC accordingly vide detailed letter dated 25th April, 2005 rejected the claims, in the absence of documents which were requisitioned.

5. Though the appellants filed Cont. Cas. (C) No. 394-395/2005 averring non-compliance of the directions in the writ petition and the writ appeals aforesaid but the same was dismissed on 16th November, 2005 with liberty to the appellants to seek appropriate remedy. SLP No. 7351/2006 preferred by the appellants against the said order was dismissed by the Supreme Court on 5th May, 2006.

6. It was then that the writ petition from which this appeal arises was filed. Though it was the contention of the appellants that their claims had been verified by the respondent EEPC and passed for payment and payment was withheld only for the reason of pendency of the criminal case and upon dismissal whereof there was no impediment to release of payment but the learned Single Judge held:-

a. that under the IPRS, without a claimant producing the required

documentation, it is not possible for EEPC to process the claim;

b. though the learned Single Judge in order dated 21st November, 2003 in the writ petition earlier preferred by the appellants had not accepted this position but the Division Bench in appeal vide order dated 28th January, 2005 (supra) had observed that verification had to be done by EEPC in accordance with law and which would include a right of EEPC to seek clarification from the appellants;

c. that the argument of the appellants that EEPC had earlier found their claims to be in order and on the basis thereof they were entitled to payment could not be accepted as there could not be any estoppel against EEPC in respect of its letter dated 17th June, 2003 to the Directorate General of Foreign Trade (DGFT) seeking clarification on whether amounts could be released to the appellants;

d. that the rejection by the EEPC of the claims of the appellants was in terms of the IPRS and could not be said to be arbitrary or unreasonable; unless complete documentation was made available to the respondent EEPC, they could not be expected to clear the claims.

7. We fully concur with the reasoning aforesaid of the learned Single Judge. We may add that, had the appellants been entitled to the amounts on the basis of the letter dated 17th June, 2003 of EEPC and had no further verification been required, the payment to the appellants would have been directed in the earlier round of writ petition itself. Instead, the claims of the appellants were directed to be verified. The Judgments/orders in the earlier round of litigation have attained finality. They merely directed the respondents to verify the claims of the appellants and to make payment only of the amounts found due. Such verification admittedly has not been possible owing to the requisite documents being not available. The appellants want us to now on the basis of the same documents, which were placed before the learned Single Judge and the Division Bench in the earlier round of litigation, and on the basis whereof this Court was not able to find the claims of the appellants to be admitted by the respondents and give direction for payment, issue such direction in this second round of litigation. The same is impermissible.

8. Not only so, we are of the view that the writ petition itself, for enforcing a monetary claim was not maintainable. The Supreme Court recently in *Abbas Ahmad Choudhary Vs. State of Assam*, , after a consideration of the entire case law on the subject including in *Suganmal Vs. State of Madhya Pradesh* AIR 1965 SC 1741 , *U.P. Pollution Control Board and Others Vs. Kanoria Industrial Ltd. and Another*, and *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , made the legal position clear as under:-

(i) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or

its officers;

(ii) If a right has been infringed-whether a fundamental right or a statutory right and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realized by the Government without the authority of law;

(iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the Civil Court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of powers conferred under Article 226 for payment of money;

(iv) There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment etc. While a petition praying for mere issue of writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the tax collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition;

(v) It is one thing to say that the High Court has no power under Article 226 to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without authority of law, there is no good reason to deny a relief of refund to the citizens;

(vi) Where the lis has a public law character or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy will not be denied.

The claim of the appellants would fall in category (iii) above and considering the disputed questions of fact involved, writ remedy is not available.

9. Before parting with the case we may record that during the pendency of the present appeal also an opportunity was given to the appellants to in conjunction with the officials of the respondents again accomplish verification of its claims but it was again reported that the appellants were required to give the Customs Certified Invoices, Bank Realization Certificates, Customs Certified Packaging Lists and Test Certificates but all of which it could not submit. We therefore do not find any merit in this appeal and dismiss the same. However in the facts, no

costs.