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(2018) 01 DEL CK 0291

In the Delhi High Court

Case No : Civil Writ Petition No. 1046 Of 2016

Dr. Reddy’s Laboratories Limited And Another — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 9, 9(4)

Citation : (2018) 01 DEL CK 0291

Hon'ble Judges : Sanjiv Khanna, J;Chander Shekhar, J

Bench : Division Bench

Advocate : S. Ganesh, Neelima Tripathi, Vidhi Gupta, Jasmeet Singh

Final Decision : Disposed Of

Judgement

Sanjiv Khanna J

1. Dr. Reddy's Laboratories Limited and M.V. Narasimham have filed the present writ petition with prayers which include challenge to sub-para (i) of paragraph 3 of Notification No. 43(RE-2013) 2009-2014 dated 25th September, 2013 and sub-para (i) of paragraph 2 of Notification No. 44(RE-2013) 2009-2014 dated 25th September, 2013.

2. The petitioners, have however given up challenge to the constitutional vires of the aforesaid sub-paragraphs in the two notifications, in view of the decision dated 7th January, 2016 in Writ Petition (C) No. 6732/2015, T.T. Limited versus Union of India and Another in which a similar contention was raised and rejected. We shall be subsequently again refer to this decision.

3. The substantive prayer made by the petitioner is for direction to the respondents to process their claim under the Incremental Export Incentivization Scheme (Annual) in accordance with law. The contention is that the petitioner application dated 30th November, 2015, for grant of Rs. 29.12 crores as annual incentive has not been disposed of.

4. Counsel for the respondents has drawn our attention to the order dated 7th September, 2016 granting duty credit of Rs.1 crore under the scheme. The said order was filed by the petitioner alongwith the additional affidavit filed on 9th January, 2017.

5. The petitioner submits that the latter dated 7th September, 2016 is merely a communication and does not dispose of the application filed by the petitioner for duty credit of Rs.29.17 crores. Reference is made to Notification No. 3(RE-2013)/2009-2014 dated 18th April, 2013.

6. Our attention was drawn to Section 9 of the Foreign Trade (Development and Regulation) Act, 1992. In fact the Counsel for the respondents relies on the said provision. Sub-Section (4) to Section 9 states that Director General or an officer authorised under sub-section (2) can for good and sufficient reasons to be recorded in writing suspend or cancel any license, certificate, scrip or instrument bestowing financial or fiscal benefit granted under the Act. Respondents state that the application filed by the petitioner has to be dealt with and examined in accordance with Section 9. This being the position and stand of the respondents, it is required and necessary that the application should be dealt with and examined on merits by passing a speaking and a reasoned order. In T.T. Limited (supra), the Division Bench had specifically directed that the claim made by the petitioner therein should be disposed of by passing a reasoned order, after due application of mind on the contents of the application.

7. During the course of hearing, it was pointed out by the petitioner that M/s T.T. Limited had filed W.P.(C) No. 2000/2016 as the respondents pursuant to the direction given in W.P.(C) No. 6732/2015 had again passed a non-speaking order rejecting the claim. This was adversely commented upon in orders passed in W.P.(C) No. 2000/2016, filed T.T. Limited and on subsequent dates. Thereafter, T.T. Limited has filed W.P.(C) No. 11001/2017 in which notice has been issued and reply, etc. is awaited.

8. We have noticed the stand taken by the respondents, who rely upon Section 9 of the afore-stated Act. Sub-Section (4) of the said Act mandates and requires the authority to pass a reasoned and a speaking order. The respondents, we believe, are conscious of the aforesaid position and the requirement by the statute to pass a speaking and reasoned order. The said exercise must be undertaken. This is a specific direction of the Court and in case a speaking and a reasoned order is not passed, appropriate directions and orders, adverse comments, including imposition of costs may be required and can be made. We also hope and trust that the respondents would abide by the said stipulation.

9. To cut short delay, we direct that authorised representative of the petitioner will appear before the Authority on 18th January, 2018 at 2.30 P.M. He shall be heard on the said date and thereafter a speaking and a reasoned order would be passed on or before 31st January, 2018. In case the petitioners are aggrieved by the said order, they will be entitled to challenge and question the same in

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accordance with law.

10. Counsel for the respondents would inform the counsel for the petitioners about the details of the officer before whom appearance is to be made.

11. The writ petition is disposed of in the aforesaid terms, without any order as to costs.

Dasti under signature of the Court Master.

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