(2014) 10 KL CK 0002

In the High Court Of Kerala

Case No : W.P. (C). Nos. 20350-20351 of 2014 (P)

GTN Textiles Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2015) 315 ELT 191

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, K. John Mathai, Joson Manavalan and Kuryan Thomas, Advocate for the Appellant; N. Nagaresh, ASG, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.—These writ petitions are filed by two public limited companies engaged in manufacture and export of cotton yarn. The issue pertaining to these writ petitions is based on the Foreign Trade Policy 2009-2014. The scheme floated under the Foreign Trade Policy called Focus Market Scheme is to offset high freight cost and other externalities incurred by the exporter when exporting goods to select international markets with a view to enhance India''s export competitiveness in those markets. Under the Scheme, the eligible exporters would be entitled to Duty Credit Scrip, equivalent to a certain percentage of the FOB value of exports depending on the entitlement criteria set out in the scheme. The petitioners have approached this Court on account of refusal to grant benefit accrued to the petitioners based on the above scheme for the reason that the Directors of the petitioners'' company are also the Directors of M/s. Patspin India Ltd., a private limited company. According to the official respondents, M/s. Patspin India Ltd., was imposed with penalty and an appeal is pending before the appellate authority and therefore, without clearing the penalty imposed upon M/s. Patspin India Ltd., the claim of the petitioners cannot be granted. In these matters, statement has been filed on behalf of respondents. It is stated in the statement that the official respondents have no intention to deny benefit due to the petitioner. However, the audit team of inspection found that the Directors of the petitioner company are the Directors of M/s. Patspin India Ltd., and without regularising the dues from M/s. Patspin India Ltd., the petitioner company are not entitled to the benefit under the scheme. To substantiate this objection, the official respondents rely on Rule 7(f) of the Foreign Trade, (Regulation) Rules, 1993, which reads as follows:

"The Director General or the licensing authority may for reasons to be recorded in writing, refuse to grant or renew a licence if the applicant is or was a managing partner in a partnership firm, or is or was a Director of a private limited company, having controlling interest against which any action is for the time being pending under the Act or rules and Orders made thereunder."

According to the official respondents, the Director General has the authority to refuse to grant or renewal of licence if the Directors of the company having controlling interest in a partnership firm or a private limited company.

2. Rule 7(f) enables the Director either to refuse or to grant renewal of licence if the applicant is a Managing Partner in a partnership firm or Director of a private limited company having controlling interest over it. Nowhere it is stated, any benefit accrued to the petitioner company or similarly situated applicant would be denied for the reason that for the partnership firm or private limited company in which applicant having controlling interest has liability towards Export Promotion of Capital Goods Scheme. It is to be noted that the petitioners are public limited company and totally different entity, cannot be equated with an individual who may have controlling interest in a partnership firm either as a Managing Partner or as a Director of private limited company. Therefore, I am of the view that the denial of benefit accrued to the petitioner based on this scheme is unsustainable. In the result, these writ petitions are allowed. There shall be a direction to respondents 3 and 4 to process the claim of the petitioners in accordance with the relevant scheme within a period of two months. No costs.