

(2023) 02 DEL CK 0080

In the Delhi High Court

Case No : Civil Writ Petition No. 10689 Of 2020

Jindal Stainless Ltd.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 08-02-2023

Acts Referred:

Citation : (2023) 02 DEL CK 0080

Hon'ble Judges : Manmohan, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Kavin Gulati, Monish Panda, Parth J., Anmol Jassal, Ripu Daman Bhardwaj, Aakriti Roy, Aditya Singha, Adhishwar Suri

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed with the following prayers:-

a. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, quashing the impugned Para C of Public Notice 30/2015-2020 dated 8.09.2016 issued by Respondent No. 2 as illegal and violative of Foreign Trade (Development & Regulation) Act;

b. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, quashing the impugned Order NO. 09/(10)ADG (Adj)/DRI/N. Delhi/2020-21 dated 31.08.2020 passed by the Respondent No. 4;

2. Learned senior counsel for the petitioner primarily contends that in the present case, there is no question of simultaneous availment of Status Holder Incentive Scheme (SHIS) and 0% Export Promotion Capital Goods (EPCG) Scheme as the petitioner had already surrendered EPCG Scheme in terms of para 5.14 of Hand Book of Procedure (HBP) prior to the issuance of SHIS Scrips. He points out that the Union of India as well as DGFT have in their counter affidavits supported the petitioner's stand. The relevant portion of the common counter-

affidavit filed by the Union of India and DGFT is reproduced herein below:-

"3. That in response to the notice issued by this Hon'ble Court, I state that the Petitioner had obtained 25 zero duty EPCG authorizations, 9 in FY 2012-13 and 16 in FY 2013-14 respectively. The Petitioner thereafter decided to avail SHIS benefit for the exports made during the FY 2011-2012 and FY 2012-2013 and in view of the bar under the FTP in simultaneously availing SHIS and zero duty EPCG benefit in the same year, it surrendered the EPCG benefit received under zero duty EPCG authorization by voluntarily exiting. Consequently, the Petitioner became liable to pay customs duty (saved amount i.e. exemption availed under Notification No.102/09-Cus dated 11.9.2009) along with interest of 15%. Accordingly, the Petitioner vide its request of demand letters dated 16.2.2015 and 18.2.2015 applied to the Regional Licensing Authority of Respondent No.2 at Cuttack and Panipat for the issuance of demand notices in order to pay the customs duty along with an interest of 15% ad valorem as regards the capital goods imported under the EPCG scheme in terms of 5.14 of the HBP. In pursuance to the demand notice issued by Regional Licensing Authorities of Panipat and Cuttack, the Petitioner paid the custom duty by utilizing the SHIS scrips purchased from the open market as stipulated under 5.14 of the HBP while the interest was paid in cash in accordance with para 3.17.11 of the FTP. Accordingly, the Regional Licensing Authorities of Panipat and Cuttack accepted the payment and issued exit letter(s) dated 30.4.2015, 1.5.2015 and 25.6.2015 for the FY 2012-13, FY 2013-14 to the Petitioner.

4. That I state that after regularizing/exiting from the obligations under EPCG authorizations, the Petitioner applied for scrips under SHIS and accordingly, the Regional Licensing Authority issued SHIS scrips vide letter dated 6.5.2016 and 25.5.2016 for the exports made during FY 2011-12 and FY 2012-13 respectively i.e. 11 scrips for exports in FY 2012-13 and 28 scrips for exports in FY 2013-14. Prior to the issuance of SHIS scrips, the Petitioner vide its letter dated 11.3.2016, informed Respondent No.2 about the payment with interest for FY 2012-2013 and 2013-2014 towards the voluntary exit from the EPCG scheme.

5. That I state that the above action of the Petitioner with respect to exit from EPCG authorizations after its regularization by paying relevant duty with interest and later availing SHIS for the exports made during FY 2011-12 and FY 2012-13 was not a violation of the extant policy and Respondent No.2 has already clarified this position in the case of another exporter. Such clarifications are issued by Respondent No.2 under powers vested under para 2.57(a) of the FTP 2015-20. A copy of Clarification dated 20.2.2017 issued by Respondent No.2 is annexed hereto and marked as Annexure "R-1/1".

6. That I state that the intent of the FTP 2009-14 was to prevent dual benefit to be taken by an exporter, both zero duty EPCG authorization in a particular year and SHIS benefit for the exports made in the year preceding to that year in which the zero duty EPCG authorization was availed. This position was as per vide Public Notice 12 dated 26.7.2012, which stated as under:

"Para 3.10.3 (b) is being rewritten to better reflect the intention of policy. The rewritten para will be as under:

"b) In case an applicant has availed Zero Duty EPCG Authorisation during the year 2010-11 or 2011-12 or 2012-13, they shall not be entitled to SHIS for that year [i.e. for export made during the respective previous years (2009-10, 2010-11, 2011-12)]. Such SHIS applications will be summarily rejected and para 9.3 (late cut for delay in filing application) shall also not be applicable."

In the instant case, one benefit (taken under EPCG authorizations) had been regularized after paying duty with interest by the Petitioner.

7. That I state that impugned Public Notice 30/2015-2020 dated 8.9.2016 was issued after the RLAs had accepted and regularized the EPCG authorizations and the Petitioner had already availed SHIS benefits as explained above. Therefore, Para C of the Public Notice dated 8.09.2016 has no relevance in the instant matter owing to the reason that it was issued after the Petitioner had already received exit letters in respect of EPCG authorizations (i.e. on 30.4.2015, 1.5.2015 and 25.6.2015) and after the Petitioner was issued SHIS scrips (i.e. on 6.5.2016 and 25.5.2016). Accordingly, the challenge to Para C of Public Notice 30/2015-2020 dated 8.9.2016 by the Petitioner is not warranted. The Order dated 31.8.2020 impugned by the Petitioner has been passed by Respondent No.3 and 4 which is the cause of action in the instant case and the contentions raised by the Petitioner in the instant Petition also primarily relate to the said Order.

8. That I accordingly state that the actions of the Petitioner in regularization of the impugned EPCG authorizations and subsequently availing benefits under SHIS scheme after regularization of the EPCG authorizations from Regional Licensing Authorities is not a violation of the extant policy and procedure and a clarification to that effect has been sent to similarly placed exporters by Respondent No.2."

3. Though initially the Directorate of Revenue Intelligence (DRI) had filed a counter-affidavit opposing the present writ petition, yet today learned counsel for the DRI has handed over his revised instructions dated 6th February, 2023. The said revised instructions are reproduced hereinbelow:-

"Please refer to your letter bearing No. CBIC/AS/034/2023, dated 14.01.2023 regarding the above subject.

The stand of the department has already been elaborated in the counter-affidavit filed by this office before the Hon'ble High Court of Delhi and the Court will decide based on merit of the case.

However, on examination of the counter-affidavit filed by DGFT before the Hon'ble High Court of Delhi, this office has no objection regarding the point raised in the counter-affidavit wherein they have stated that-

1) The impugned Public Notice 30/2015-2020 dated 08.09.2016 was issued after the RLAs had accepted and regularized the EPCG authorizations and the Petitioner had already availed SHIS benefits. Therefore, para C of the Public Notice 30/2015-2020 dated 08.09.2016 has no relevance in the instant matter owing to the reason that it was issued after the Petitioner had already received exit letters in respect of EPCG Authorization (i.e. on 30.04.2015, 01.05.2015 and 25.05.2015) and after the Petitioner was issued SHISH scrips (i.e. on 06.05.2016 and 25.05.2016).

2) The actions of the Petitioner in regularization of the impugned EPCG authorizations and subsequently availing benefits under SHIS scheme after regularization from Regional Licensing Authorities is not a violation of the extant policy and procedure and a clarification to that effect has been sent to similarly placed exporter by DGFT.

Moreover, DGFT is the proper authority for interpretation of policy as per para 2.3 of FTP 2009-2014 and also as per Para 2.57 of the FTP 2015-2020 and the decision of DGFT shall be final and binding. DGFT is also the proper authority to look into the matter of regularization of EPCG authorizations, issuance and availment of SHIS scrips. As seen from the counter-affidavit filed by DGFT, on similar matter, several clarifications in the same line has already been issued to the concerned exporter by DGFT.

This is for your information and necessary action.”

4. In view of the aforesaid revised instructions, learned senior counsel for the petitioner does not press prayer (a) of the present writ petition.

5. The Supreme Court in Titan Medical Systems Pvt. Ltd. vs. Collector of Customs New Delhi 2003 9SCC 133 has held as under:-

“12. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing Authority having taken no steps to cancel the licence. The licensing authority has not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs Authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.”

6. Keeping in view the aforesaid judgment as well as the revised instructions

dated 06th February, 2023 issued by the Directorate of Revenue Intelligence, present writ petition is allowed in terms of prayer (b).

7. With the aforesaid directions, present writ petition stands disposed of.