(2011) 08 DEL CK 0217

In the Delhi High Court

Case No : Writ Petition (C) 2607 of 2010

J.P. Juneja APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0217

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rekha Aggarwal, for the Appellant; Saquib and Vinitha Sekhar, Assistant Director Dri, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petition has been filed seeking mandamus for payment of the balance reward amount under the Grant of Rewards to Informers and Government Servants Policy of the Ministry of Finance of the Government of India.

2. The Petitioner claims to have in the year 1994 given to Anti Evasion Cell (Excise) information about the evasion of excise duty by one M/s Digital World India Ltd., Bombay of almost Rs. 1.20 crores in the import of printers against various bills of entry, by under-invoicing the goods. It is further the case of the Petitioner that the Anti Evasion Cell passed on this information to the Respondent No. 2 Directorate of Revenue Intelligence (DRI) and upon adjudication of the matter it was proved that the said M/s Digital World India Ltd. had wrongly declared the correct value of the Dot Matrix Printers and thereby evaded the custom duty of crores of rupees to the prejudice of the Government Exchequer.

3. It is yet further the case of the Petitioner that the Respondent No. 2 DRI in the said proceedings collected Rs. 25 lacs from M/s Digital World India Ltd. in the year 1994, Rs. 2,29,644/- in the year 1995 and a bond of Rs. 8,29,000/- also in the year 1995.

4. The Petitioner claims that under the Reward Policy aforesaid, the Petitioner

received an advance reward of Rs. 2.50 lacs after the matter was adjudicated in June 2000 and though was promised that the balance award would be given to him after disposal of the appeal preferred by M/s Digital World India Ltd. against the order of adjudication but the said award amount has not been paid. The Petitioner claims that owing to having given the information aforesaid, he on the one hand lost his employment with M/s Digital World India Ltd. and on the other hand had not been paid the award amount also. The Petitioner claims the balance award amount of Rs. 21,90,000/- to be due to him.

5. The Award Policy of the year 1985 in force in the year 1994 when the Petitioner gave information of tax / duty evasion inter alia provided for:

(i) The quantum of rewards to be upto 20% of duty evaded plus 20% of the fine and penalty levied/imposed and realized, provided the amount does not exceed 20% of the market value of the goods involved;

(ii) For the reward not being granted as a matter of routine and being purely an ex-gratia payment not claimable by anyone as a matter of right;

(iii) For the Authority competent to grant the reward to keep in mind the specificity and accuracy of the information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, the difficulty in securing the information etc. as the factors for determining the reward;

(iv) For the reward to be paid in stages, with 25% of the expected final reward being paid after the issue of show cause notice provided the authority competent to sanction the reward was satisfied that there is reasonable chance of evasion being established in adjudication and sustained in appeal/revisional proceedings, with another 25% being payable after adjudication and the remaining 50% being payable only after conclusion of the appeal/revision proceedings resulting in upholding of the demand/penalties etc.

6. The Reward Policy of the year 1985 (supra) was superseded by the Reward Policy of the year 2001. The Reward Policy of the year 2001 provided for reward upto 20% of recovery of evaded duty plus fine/penalty imposed and recovered. The 2001 Policy also provided for "no advance / interim reward" to be granted "normally" and for 25% of the voluntary deposits made by the evader to be considered for payment as advance/interim reward after the issuance of show cause notice provided the authority competent to sanction reward is satisfied that there is reasonable chance of recovery of the balance. The said Policy provides for payment of the final reward only after recovery of the evaded duty.

7. This petition was preferred treating the Petitioner to be entitled to the reward in accordance with the 1985 Reward Policy (supra) whereunder reward was not dependent upon recovery. It is not in dispute that the adjudication proceedings/ appeals etc. in the present case stand concluded in the year 2007.

8. The petition came up before this Court on 20th April, 2010 when the counsel for the Respondents appearing on advance notice invited attention to Union of

India (UOI) and Others Vs. C. Krishna Reddy, laying down that the guidelines/ policy as in force on the date of consideration for grant of reward would apply and not the guidelines/policy on the date of furnishing information. It was further held that absolute discretion having been conferred on the authority under the guidelines to grant reward having regard to the various factors set out in the guidelines/policy, the reward cannot be claimed by way of right and the High Court cannot issue writ of mandamus compelling payment of the reward.

9. The Petitioner after studying the aforesaid judgment filed an additional affidavit stating that the Petitioner was entitled to be paid at least 25% of the amount of Rs. 25 lacs plus Rs. 2.30 lacs deposited by the tax evader as well as 25% of the bond for Rs. 8.29 lacs furnished by the tax evader. The Petitioner thus claimed to be entitled to approximately Rs. 8 lacs in accordance with the 2001 Policy and the aforesaid judgment also and contended that he had been deprived of the said amount for 16 years.

10. Notice of the petition was issued on 16th July, 2010 limited to the aforesaid claim of the Petitioner for Rs. 8 lacs only out of which Rs. 2.50 lacs have been paid as aforesaid.

11. The Respondents in their counter affidavit have further relied upon the clarification dated 23rd August, 2002 to the effect that "25% of the voluntary deposit" in the 2001 Policy aforesaid is to be read as "25% of the admissible reward". The Respondents in their counter affidavit have admitted voluntary payment of Rs. 25 lacs plus Rs. 2,29,644/- by the tax evader M/s Digital World India Ltd. and have further stated that though duty amount of Rs. 1,21,90,163/- was demanded and the said demand confirmed and penalty of Rs. 30 lacs and Rs. 10 lacs imposed but in appeal preferred, conditional stay subject to payment of pre-deposit of Rs. 5 lacs was granted and which amount was deposited; that the matter was remanded to the Adjudicating Authority and though pursuant to remand the demand of Rs. 1,21,90,163/- and fine of Rs. 67,97,000/- and Rs. 30 lacs imposed but the amount has not been recovered. It is thus stated that till date only a sum of Rs. 32,29,444/- including pre-deposit aforesaid has been recovered and the balance amount is outstanding and the Petitioner has already received more than due amount of 25% of the admissible reward. It is stated that the final reward can be sanctioned only after recovery of the entire amount and which has not been received as yet.

12. Though on a reading of the counter affidavit it appears that according to the Respondents reward due has already been paid but an additional affidavit has been filed by the Respondents stating that the total amount recovered as on 18th July, 2011 from M/s Digital World India Ltd. is Rs. 40,58,664/-; that though the rules prescribed a ceiling limit of 20% of the actual recovery but the quantum of the reward due cannot be indicated at this stage as it is the discretion of the Reward Committee to decide the quantum of the reward; that the maximum permissible amount as per the prescribed limit of 20% of Rs. 40,58,664/- is Rs. 8,11,729/- out of which Rs. 2.50 lacs has already been paid; it is further stated

that the claim of the Petitioner is pre-mature.

13. The counsels have been heard.

14. I am of the opinion that the Petitioner in the present case cannot be made to wait endlessly. The decision as to whether the reward to the Petitioner should be the maximum i.e. 20% of the recovery or anything less than that so as to decide the amount to which the Petitioner is entitled as of today on the basis of the present recovery of Rs. 40,58,664/- ought to be taken now. In the event of further recovery being made, decision on the basis thereof can be taken subsequently. The Apex court in C. Krishna Reddy (supra) was not concerned with the aspect of payment of reward amount relatable to recovered amount.

15. The writ petition is therefore allowed to the extent of directing the Respondents to within eight weeks of today, take a decision and communicate the same to the Petitioner, as to the reward due to the Petitioner on the basis of the recoveries made till now and to pay the said reward after adjustment of amount paid, to the Petitioner within four weeks thereafter, failing which the Respondents shall be liable to pay interest for the delay at the rate of 10% per annum from the expiry of twelve weeks from today and till the date of payment. The Respondents are further directed to, from time to time, on the basis of the recoveries made, decide on the further reward amount if any due to the Petitioner and to pay the same to the Petitioner.

16. The Respondents to also pay costs of Rs. 10,000/- of this petition to the Petitioner)