(2016) 01 DEL CK 0393

In the Delhi High Court

Case No : Writ Petition (C) No. 10031 of 2015

Lifelong India Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Citation : (2016) 334 ELT 410

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : M.P. Devnath, Yogendra Aldak and Abhishek Anand, Advocates, for the Petitioner; Abhay Prakash Sahay, CGSC and Satish Kumar, SSC, for the Respondent

Final Decision : Disposed Off

Judgement

1. Notice. Learned counsel for respondent Nos. 1 & 2 accepts notice.

2. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

3. The petitioner is engaged in the supply and manufacture of plastics, pressure die casting components and multiple assemblies thereof. The petitioner applied for and was granted four Advance Authorization Licences dated 30th March, 2006, 25th October, 2006, 19th April, 2007 and 13th June, 2008. In terms of the said licences, the petitioner was permitted to import raw materials at ?Nil? rate of Customs duty and NIL rate of Additional Duty of Customs, subject to the petitioner fulfilling its export obligations and producing Export Obligation Discharge Certificate (EODC) issued by the Director General of Foreign Trade (DGFT).

4. Show cause notices were issued by the Customs Department to the petitioner in respect of each of the above licences demanding a sum equivalent to the bank guarantee amount as Customs Duty/Additional Duty of Customs together with interest for failure to fulfil the export obligations.

5. The details in respect of each of the licences have been placed before the Court by the petitioner in a tabular form. It is sought to be pointed out that in respect of two of the licences dated 19th April, 2007 and 13th June, 2008, subsequent to the adjudication order dated 31st March, 2014, the petitioner did receive the EODC issued by the DGFT on 30th October, 2014 and 30th March, 2015 respectively. It is pointed out that in similar circumstances, this Court by order dated 25th August, 2015 in W.P. (C) No. 7896/2015 (Jonson Rubber Industries Ltd. v. Union of India) set aside the orders-in-original and remanded the matter to the adjudicating authority for examining the matter afresh "after taking into consideration the EODC which has now been obtained by the petitioner".

6. The above facts are not disputed by the learned counsel for the respondent. He, however, points out that it was open for the petitioner to have appealed against the adjudication order and that the petitioner did not.

7. Considering that this Court, under similar circumstances, in the case of Jonson Rubber Industries Ltd. (supra) required the adjudicating authority to examine the matter afresh in the light of the EODC obtained by the petitioner therein subsequently, the Court in the present case sets aside the Orders-in-Original dated 31st March, 2014 passed by the adjudicating authority in respect of two advance authorisation licences dated 19th April, 2007 and 13th June, 2008 and directs the adjudicating authority to consider the matter afresh in light of the petitioner having obtained the EODC from the DGFT.

8. Turning now to the advance authorisation licence dated 30th March, 2006 it is pointed out that the DGFT is yet to issue the EODC to the petitioner. However, the petitioner is confident that the DGFT will now issue the EODC without unnecessary delay and if the matter is remanded to the adjudicating authority, the petitioner will be able to produce the EODC. On the strength of the above statement made on behalf of the petitioner, the Court set asides the order dated 31st March, 2014 passed by the adjudicating authority in respect of the advance authorisation licence dated 30th March, 2006 and remits the matter to the adjudicating authority for decision afresh subject to the petitioner producing the EODC in respect of such licence.

9. As regards the advance authorisation licence dated 25th October, 2006, it is stated by the learned counsel for the petitioner that the petitioner did not avail of the said licence at all and surrendered it by a letter dated 10th June, 2014. It is further pointed out that the DGFT wrote a letter dated 14th March, 2014 to the Commissioner of Customs in this regard and Deputy Commissioner of Customs in fact confirmed the said fact by letter dated 7th May, 2014. The Court is of the view that the adjudicating authority requires to take these facts into account and decide the issue afresh. Consequently, the order dated 31st March, 2014 passed by the adjudicating authority in respect of the advance licence dated 25th October, 2006 is set aside and the matter is remanded to the adjudicating authority for a decision afresh in the light of the above facts.

10. The writ petition is disposed of with the above terms. No orders as to costs.

11. Order dasti.

