(2008) 08 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No. 9224 of 2006 (GM-RES)

Mamta Exports (P) Ltd. APPELLANT

Vs

Joint Dgft RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:
Foreign Trade (Development and Regulation) Act, 1992 — Section 15 (1)

Citation : (2010) 259 ELT 336

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : M.G. Varadarajan for G. Sampath, for the Appellant; C. Shashikanth, CGSC, for the Respondent

Judgement

1. The Petitioner has called into question the second Respondent Appellate Authority''s order, dated 10th April, 2006 (Annexure-E) and for remitting the matter back to the first Respondent for verification of the documents and grant fresh hearing.

2. The brief facts of the case are that the first Respondent imposed a fiscal penalty of Rs. 11,04,002/- on the Petitioner and its Directors for the non-fulfillment of export obligations against EPCG Licence No. 3436212, dated 5th January, 1995. Aggrieved by this order, the Petitioner filed the appeal before the Respondent No. 2. But this appeal was filed without complying with the requirement of pre-deposit prescribed by the second proviso to Section 15(1) of the Foreign Trade (Development and Regulation) Act, 1992 [''the said Act'' for short]. When the Petitioner was called upon to submit the pre-deposit amounts, it pleaded financial difficulties and sought the opportunity of personal hearing. The Respondent No. 2 reduced the pre-deposit amount to 25% of the penalty amount. However the Petitioner did not deposit the reduced amount also. On the other hand, it submitted a demand draft for Rs. 25,000/-. The Petitioner sought some more opportunities, which were given by the Respondent No. 2. However, as the Petitioner did not submit the required pre-deposits and confirmed that it

could not fulfil its obligations against the export licence, the Respondent No. 2 dismissed the appeal by its order, dated 10th April, 2006 (Annexure-E). It is this order, which is impugned in this writ petition.

3. Sri M.G. Varadarajan, the learned Counsel appearing for the Petitioner submits that the second Respondent Appellate Authority has slipped into an error by passing an order on merits also. He brings to my notice that the appeal is dismissed not only because of the non-compliance of the pre-deposit amounts but also on merits. He submits that the obligations under the said licence may not have been performed but the Petitioner has paid the customs duty to the customs authorities. If the Petitioner is only given an opportunity, it would establish before the Respondents the factum of payment of the customs duty. He seeks eight weeks time to submit the pre-deposit amounts minus Rs. 25,000/- (which amount has already been deposited).

4. Sri Shashikanth, the learned Counsel for the Respondents submits that this petition is totally misconceived. The Petitioner has neither challenged the order reducing the amounts to 25% of the penalty amount nor has he challenged the validity of the second and third proviso to Section 15(1) of the said Act. The result is that what has been filed by the Petitioner is only a defective appeal, which is rightly rejected by the second Respondent Appellate Authority.

5. The submissions of the learned Counsel have received my anxious consideration. I cannot find fault with the order passed by the second Respondent Appellate Authority. The second Respondent Appellate Authority, in appreciation of the Petitioner''s difficulties, reduced the pre-deposits amount to 25% of the penal amounts. Several opportunities are indeed granted for making this pre-deposit. But the same has not been done. Therefore, the second Respondent Appellate Authority has no option but to dismiss the appeal. While dismissing the appeal it may have made a passing reference that the Petitioner has not fulfilled the export obligations. That it has made such a passing observations, does not render the impugned order bad in any way.

6. The challenge therefore to the impugned order passed by the second Respondent Appellate Authority is negatived. I see considerable force in the submissions of Sri Shashikanth that the Petitioner, who has not chosen to challenge the order of the second Respondent Appellate Authority reducing the pre-deposit to 25% of the penalty amounts or to challenge the validity of the second and third proviso to Section 15(1) of the said Act, is not entitled to seek the remand of the matter either to the first or to the second Respondent.

7. However, it is also my anxiety that if the Petitioner has indeed paid the custom duty to the customs authorities and it only wants to establish the said factum, it cannot be rendered remedy-less. I therefore, dispose of this petition by reserving the liberty to the Petitioner to submit the pre-deposit 25% of the penalty amounts to the Appellate Authority within two months from today and thereafter make an application before the second Respondent Appellate Authority for the

restoration or revival of its appeal. If no pre-deposit is made within one month from today, the impugned order passed by the second Respondent Appellate Authority attains finality.

8. This petition is disposed of. No order as to costs.