(2014) 03 BOM CK 0230

In the Bombay High Court

Case No : Writ Petition Nos. 896 and 1170 of 2012

Manik Machinery Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Citation : (2014) 310 ELT 26

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Sushant Murthy i/b. Economic Law Practice, Advocate for the Appellant; Pradeep Jetly @ J.B. Mishra, Advocate for the Respondent

Judgement

1. Heard both the sides. Perused the concurrent orders viz. Order-in-original, order in appeal and the impugned order said to be passed in exercise of revisionary powers by the Government. The only contention raised before us was that the claim has been rejected on hyper technical ground . It is submitted that the Government has been taken a view that production of the document styled as primary document viz. AR-4 is not mandatory. The Government has consistently been taking a view that what is required to be produced is proof of export and not a particular document and which could be said to be only document for evidencing such act or export. In the instant case, the petitioner has produced not only xerox copies but they are of relevant and germane documents viz. Shipping bills, bill of lading, customs invoices, Mate receipt and bank realization certificate. In these circumstances, non-production of complete AR-4 will not be fatal. We are not impressed by this argument at all. It may be that when the proof of export is produced and that act is evidenced by production of the documents referred by us viz. Shipping bill, bill of lading etc., then the claim deserves to be entertained/granted. However, in this case, it has been concurrently found that the original and duplicate copies of AR-4, which bear endorsement of Customs Authority have not been submitted. The Authorities found that in some cases AR-4 did not have the Customs

endorsement, whereas in some cases only front part of AR-4 was submitted, whereas it is the back portion on which endorsement is put by Customs. The documents pertaining to proof of exports have been categorized. It is not as if any hyper technical view has been taken because each of the Authorities have referred to other documents produced. They have referred to shipping bills, bill of lading, customs invoices, Mate receipts and bank realization certificate. However, those documents have not been relied upon because their first part has not been submitted and it is only the second part which has been placed on record. That may prove export of certain goods, but would not prove further that those were the same goods removed from the manufacturer''s factory. In such circumstances, the findings of fact are based on material produced. They cannot be said to be perverse or vitiated by any error of law apparent on the face of the record.

2. The writ petition, therefore, deserves to be dismissed and it is accordingly dismissed. The order of the Government in some other case cannot assist the petitioner before us. In that case the Government remitted or remanded the case for verification because not only the primary but other documents were produced and those were complete. Those were accepted as copies because they carried necessary endorsement. Before us the endorsements were not made on the copies which have been produced. In such circumstances, the order passed by the Government in the case of "Garg Tex-O-Fab Pvt. Ltd." [2011 (271) E.L.T. 449 (G.O.I.)] will not assist the petitioner in any manner.

3. Writ petition is, therefore, devoid of any merits and it is accordingly dismissed. No order as to costs. It is fairly stated that this order shall also dispose of Writ Petition No. 1170 of 2012. Accordingly, by consent, it is treated as if it is taken up on today''s board and disposed of by this order.

