(2008) 01 DEL CK 0227

In the Delhi High Court

Case No : Writ Petition (C) 2981 of 1997

Mohan Machines Limited APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 4(1)

Citation : (2008) 01 DEL CK 0227

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : J.S. Arora and Sanjay Kumar, for the Appellant; Monika Garg, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner in these proceedings Under Article 226 of the Constitution of India has challenged two orders dated 30.7.1996 (hereinafter called the adjudicatory order) and the order in appeal dated 12.2.1997 by the Joint Director General of Foreign Trade (hereinafter referred to as the appellate order) directing it to deposit payments.

2. The petitioner in terms of a World Bank project, had to supply 21 Stainless Steel Road Milk Tankers and 2 Milk Storage Tanks to the National Dairy Development Board (hereinafter called as NDDB). For this purpose it was issued a Special Imprest Licence No. P/L/3079918 on 22.10.1984 for importing stainless steel sheets weighing 36710.62 kg through the Canalizing Agency i.e. Steel Authority of India Ltd. (SAIL). On 20.8.1985 the NDDB cancelled the order for 5 Road Milk Tankers thereby reducing the quantity to be supplied by the petitioner from the original 21 to 16. It was, therefore, eft with unutilized imported stainless steel amounting to the extent of 8049.167 kgs. The petitioner apparently had been issued another licence for importing stainless steel, also dated 22.10.1984, issued in lieu of another original licence being No. PL 3079919

which had been destroyed during the Anti-Sikh Riots for making supply of finished produces in regard to another order of the NDDB. The replaced licence was bearing No. D/2372201/02; it permitted import to the extent of 21045 kgs. of stainless steel. The petitioner had imported 21045 kgs. Therefore, the quantity of 13126 kgs. had yet to be imported under the second licence (hereinafter referred to as licence No. 19).

3. On 27.4.1988 the petitioner requested the Chief Controller of Imports and Exports (CCI & E) authorities to adjust the balance quantities in respect of the earlier licence (hereinafter referred to as "licence No. 18") for which excess, unutilized quantities of 8049.167 kgs were shown as shortfall in the second licence. On 27.10.1988 the authorities informed the petitioner that its request for adjustment of quantities, as sought for, had been acceded to.

4. On 27.7.1995 the show cause notice was issued to the authorities to the petitioner alleging that it did not furnish evidence of fulfilling its export obligations in respect of licences issued being P/L 0008310 dated 15.02.1984 and the first licence No. P/L 3079918 dated 22.10.1984. The notice also threatened penal action u/s 4(1) of the Imports & Exports (Control) Act, 1947. The petitioner filed reply dated 17.11.1995 to the show cause notice. The allegations leveled against the petitioner were denied. It took the position that first import stock was received on 3.1.1985 and the due notice drawn to the Duty Exemption Entitlement Certificate for Imports (DEECI) issued. It was explained that due to the Anti-Sikh Riots on 1.11.19984 there was considerable damage and destruction of the property and raw materials an application was made to extend the export obligation period, to the authorities. The petitioner further stated that the NDDB Baroda cancelled the order for supply of 5 Stainless Steel Barrels Road Milk Tankers on 20.8.1985 leaving a quantity of 8049.167 kgs un-utilized under the first licence. Correspondingly a request for adjustment of the un-utilized quantity with the utilizing quantity of 13,121 kgs, in the second licence was made. The response of the authorities dated 27.10.1988 was relied upon in these circumstances. The petitioners contended that the proportionate export obligation in terms of the extension of the requirement to export and the adjustment permitted had been fulfilled.

5. In addition, the petitioner contended that it had deposited all the relevant documents with the authorities including the statement of export; part F of the firm duly signed by the authority; declaration as per Trade Notice No. 3/84 dated 1.5.1984; orders of IDC; Delivery Challans of SAIL with respect to SS Sheets; Copy of Invoices duly attested by the Project Authority; Certificate dated 21.11.1986 issued by the Indian Dairy Corporation with respect to supply of 3 Stainless Steel Barrels of 8800 litres capacity; Certificate of Payments attested by Project Authority; and a copy of cancellation order dated 20.8.1985 with respect to 58800 litres capacity SS Barrel Road Milk Tanker issued by National Dairy Development Board.

6. The adjudicating authority issued the first impugned order on 30.7.1996. This

order did not advert to the show cause notice issued to the petitioner: it, however, referred to the first licence (which had been repelled by them) and alleged that the petitioner had not fulfilled its export obligations, despite extension of the period to do so till 31.10.1986. This order was an unreasoned one and on a stereotyped form. The petitioner appealed against this order to the Joint Director General of Foreign Trade with all the supporting documents. It referred to a show cause notice issued on 27.7.1995; the old licence; as well as its reply and adverted to a hearing dated 17.11.1995. The petitioner contended that the adjudicatory order, directing forfeiture of the amount, issued by the adjudicating authority to the extent of Rs. 1,65,198/- was therefore mechanically made without considering the relevant facts. The petitioner reiterated its position that the unutilized quantities had been adjusted against the second licence and that so far as the fulfilment of export obligation obligation was concerned, supplies had been made to the NDDB. It also relied on copies of all the relevant documents issued to it in that regard. Apparently, the petitioner appeared for personal hearing on 12.11.1996 before the Appellate Authority and that drew its attention to the fact that the Joint Controller of Import and Excise had on 10.9.1986 had endorsed on the licence itself that the export obligations were duly fulfilled. The photocopy of that endorsement has also been filed along with the writ petition. The such endorsement reads as follows:

THE FIRM HAVE COMPLETED THE OBLIGATION AGAINST THIS LICENCE AND AS SUCH NO BOND IS REQUIRED AS PER PARA 24 (4) OF APPX.19 OF IMPORT POLICY 1985-88.

On 12.2.1997 the second impugned order was issued; it reads as under:

To M/s Mohan Machines Ltd.

F-79-80, Okhla Industrial Area,

Phase -I

New Delhi.

Sub: Fulfilment of Export Obligation against Spl. Imp.

Licence No. P/43079918 dt. 22.10.1984 and Licence

Documents regarding.

Gentlemen,

With reference to your representation dated 13.12.1996 on the above subject, I write to say that there is short fall of 8 Nos. of SS Barrel Road Milk Tanker Capacity 8800 Ltrs., 4 Nos. of SS Vertical Milk Sites Capacity 30000 Ltrs. And 3 Nos. SS Storage Tankers 60000 Ltrs. You are requested to pay the Customs duty along with interest on un-utilised imported raw material against the same to the Customs Authority and also surrender the special Imprest Licence equivalent to two time of the CIF value of un-utilised imported material to the office in terms of para 128 of Hand Book, 1992-97 (Vol. I) and get enter the same in Part 9 of DEEC Book, Part I.

2) There is also short fall of Rs. 480748/- in terms of value, you are therefore requested to surrender the amount equivalent to short fall or surrender the Special Imprest Licence equivalent to two time i.e., Rs. 9,61,496/- to this office in terms of para 128 of Hand Book 1992-97 (Vol. I). Both DEEC Book No. 11067 and 68 and 011065 and 66 are returned herewith for getting the needful done.

3) You are requested to comply with the above requirements within 15 days, failing which action will be initiated under FTDR Act, 1996.

Yours faithfully

Sd/-

(ASHOK ISRANI)

FOREIGN TRADE DEVELOPMENT OFFICER

FOR JT. DIRECTOR GENERAL OF FOREIGN TRADE.

7. The petitioner has challenged the impugned orders on the ground that they have not even considered its replies. It is claimed that with the approval granted in 1988 to adjust the excess quantities lying in respect of the older licence with the quantities in the second licence, there was a proportionate rejection now of export obligations and the authorities were bound to give credit to this. If these were taken into consideration, there was no shortfall in the petitioner''s export obligations. Therefore, the forfeiture order was unwarranted. The first adjudicatory order never even adverted to the petitioner''s defence and the appellate authority without considering any ground of appeal made a blanket demand on the basis that shortfalls were noticed, concerning export obligations in both the licences.

8. The respondents in their counter affidavit admit the receipt of consignment of 3.1.1985. They also concede that the quantities in the second licence were reduced on behalf of petitioner''s request and that the petitioner''s request to club the obligations under the two licence were acceded to, in a meeting dated 14.10.1988. The respondents also concede that when the forfeiture order was issued by the adjudicating authority the respondents were unaware of the communication between the petitioner and the authorities regarding the clubbing of two licences. The position taken by the respondents is that the supplies evidenced by the payment service, issued by Indian Delhi Corporation could not be taken into possession for fulfillment of the export obligation and that the petitioner was, therefore, deemed to have supplied 15 numbers of tankers as against the 18 required to be supplied.

9. Learned Counsel for the parties reiterated the position reflected in the pleadings. It was not urged by the petitioner that the effect of the letters by the authorities in October, 1988 and concession regarding clubbing of the licences

was never considered. This shows utter non-application of mind. The petitioner is deemed to have completed all its obligations for fulfilling the export stipulation under the licence. Without discussing any of these materials or the points urged in support of the appeal, the adjudicating authority blindly issued the forfeiture order which was equally mechanically confirmed in appeal. Counsel also submitted that the adjudicating authority preferred to rely on a show cause notice which had never been issued to the petitioner and concerned another licence.

10. Learned Counsel for the respondent, on the other hand, submitted that the impugned orders were justified and the petitioner had never been able to satisfy the authorities that it had fulfilled its export obligations, in terms of the licences, therefore, the petitioner does not deserve any relief in these proceedings.

11. The above narrative discloses that pursuant to purchase orders issued by the NDDB, two import licences were issued in October, 1984 to the petitioner for importing stainless steel. The second licence got destroyed and there was a shortfall in import quantity. As far as the first licence was concerned, the NDDB cancelled part of the contract resolving in the excess quantity of imported stainless steel with the petitioner. At that stage it requested for clubbing of the obligations under the two licences. This was agreed on 14.10.1988 and communicated by a letter dated 27.10.1988. The show cause notice was issued by the respondents on 27.7.1995. This show cause notice alleged that the first licence and an earlier licence 0008310 dated 15.2.1984 had been issued and that there was shortage in fulfilling the export obligations. The petitioner''s stand was that as a result of the subsequent event whereby its request to adjust the un-utilized quantities with the second licence was concerned, being acceded, it had fulfilled its export obligations. It also relied upon the copies of all the documents and alleged that they were lodged with the authorities at the relevant times.

12. A reading of the impugned adjudicatory order shows that it was issued mechanically, in stereotyped form. It has not been denied by the respondents in their counter affidavit that the quantities in the first and the second licences were in fact clubbed. That was the principal defence taken by the petitioner in the reply to the show cause notice. Besides this, the petitioner relied on about 10 sets of documents to suggest that it had fulfilled its export obligations in support of the balance quantities, after clubbing of the two licences. This aspect does not find advertence in the adjudicatory order. Strangely enough the adjudicatory order prefers to some show cause notice issued in 1988 in respect of first licence, however, was issued in 1995. This Court has no doubt that the adjudicatory authority proceeded to act in a mechanical manner without applying its mind to the facts of the case. The defence of the petitioner, and the circumstances surrounding the equality of obligations in the first and second licence and the documents supplied in support of the allegation that there was no further obligation to be fulfilled by the petitioner. The appellate authority admittedly granted some hearing to the petitioner, yet even without a decision on

the appeal the petitioner was called upon by the second order dated 12.2.1997, to pay the sum of Rs. 9,61,496/-. This order is in the form of a demand and was not preceded by any notice or reasons.

13. The above discussion shows that the petitioners had fulfilled its export obligations under the first licence and that with the adjustment of the quantities imported in the first licence with the quantities in the second licence, it had duly discharged its obligations. Sadly this explanation has not even been discussed either by the adjudicating authority or in the subsequent order raising the demand. Though several documents have been filed along with the writ petition, which include copies of gate passes, invoices, etc. I am of the opinion that it would not be safe for this Court to assume the role of the decision maker. For the purposes of these proceedings it is sufficient to note that the attention bestowed by the authorities on the materials and explanation given to them was scanty, to put it mildly. They are complete disdainful of the response given by the petitioner to the show cause notice and more importantly to its repeated and persistent stand that the result of clubbing the obligations in the two licences was a proportionate reduction in the export obligation in the first licence. In these circumstances the impugned orders cannot be sustained.

14. In view of the above findings, the order of the adjudicating authority dated 30.7.1996 and the second order dated 12.2.1997 issued by the Joint Director of Foreign Trade are hereby quashed. The matter is remitted for proper consideration by the adjudicating authority and a decision on the merits after hearing the parties. The adjudicating authority shall issue a speaking reasoned order dealing with all the contentions raised by the petitioner.

15 The writ petition is allowed in the above terms. No costs.

