
(2020) 02 MP CK 0204

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18142 Of 2019, 18252 Of 2017

Mpd Industries Limited And Another

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-02-2020

Acts Referred:

Special Economic Zones Act, 2005 — Section 30
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 MP CK 0204

Hon'ble Judges : S.C. Sharma, J;Shailendra Shukla, J

Bench : Single Bench

Advocate : R.T. Thanevala, Prasanna Prasad, Paritosh Seth

Final Decision : Dismissed

Judgement

S.C. Sharma, J

Shri R.T. Thanevala along with Shri Paritosh Seth, learned counsel for the petitioners.

Shri Prasanna Prasad, learned counsel for the respondent(s).

Regard being had to the similitude in the controversy involved in the present cases, these writ petitions were analogously heard and by a common

order, they are being disposed of by this Court. Facts of the Writ Petition No.18142/2019 are narrated hereunder.

1. The petitioners before this Court have filed this present petition being aggrieved by the orders dated 11.09.2018 and 20.11.2018 passed by the

Policy Relaxation Committee, Directorate General of Foreign Trade. The petitioners' contention is that the petitioner No.1 is Private Limited Company

and the petitioner No.2 is the Director of petitioner No.1 / Company.

2. It has been stated by the petitioners that the petitioners have received purchase order from M/s DIC Fine Chemical Private Limited, a SEZ Unit, situated in Dahej, Special Economic Zone, Tal Vagare, District Bhachch, Gujrat for supply of Soya Long Oil Alkyd Resin falling under Tariff Item

No.3907 50 00 of the Schedule II to CETA, 1985.

3. Based upon the purchase order received for supply of the aforesaid goods to SEZ Unit, which is treated at par with export, the petitioners have

applied to DGFT for issuance of Advance Licences / Authorizations, and accordingly, five Advance Authorizations were issued by the Office of Joint

Director General of Foreign Trade, Bhopal.

4. The petitioner have further stated that they have imported the specified goods / raw material permitted under the Advance Authorization required

for manufacture of the said Soya Long Oil Alkyd Resin to be supplied to SEZ Unit. The petitioner has also stated that after completion of export

against Advance Authorizations, the exporter is required to get the same discharged / closed by submitting relevant document as proof of export. The

petitioners have further stated that they approached the Regional Office of Director General of Foreign Trade to ascertain the document, which are

required to be submitted for discharge of export obligation and closure of the Advance Authorizations and at that point of time, they came to know that

one of the documents required for proof of export. is Bill of Export.

5. The petitioners' contention is that they were not aware about such a requirement and did not prepare the Bills of Export at the time of supply

of goods made to SEZ Unit, and therefore, they approached the Officer-in-Charge of the SEZ Unit with a request to provide necessary Bills of Export

against those supply made by them. However, the SEZ authorities have refused to do so stating that Bills of Export cannot be provided at a later date

after the exports have been done.

6. The petitioner have further stated that in a case of export relating to M/s Saint Gobain Glass India Limited, the requirement of preparation of Bill of

Export for the goods supplied to SEZ Unit was waived and the closure of Advance Authorizations have been allowed on the basis of tax invoices. The

petitioners have further stated that the petitioner / Company requested the Policy Relaxation Committee to waive the condition of preparation of Bill of

Export for the supplies made by them to SEZ Unit. The petitioners also requested

the SEZ Unit to issue necessary certificate confirming that goods supplied by the petitioners under the cover of specified tax invoices and ARE-1s were received / admitted by the respective units of the SEZ, however, the SEZ authorities have declined to issue any such certificate.

7. The petitioner, thereafter, vide letters dated 7. 02.2018 and 02.04.2018, approached the PRC along with relevant documents, except Bills of Export, in support of the evidence that goods were supplied to SEZ Unit and request was made for condoning the procedure of lapse for non-preparation and filing of Bills of Export. The request of the petitioners was turned down and by the PRC on 11. 09.2019 and the petitioner again made a detailed representation on 12.01.2019 and the same has also been turned down. The petitioners' contention is that the PRC has wrongly rejected the request of the petitioners for conditions of generating Bills of Export against the supply of the goods to SEZ Unit and there cannot be any levy of tax upon the petitioners as the petitioners have imported raw material (duty free) and it was consumed in manufacturing of goods exported and the manufactured product was received by the importer (Unit of Special Economic Zone, Dahej).

8. The petitioners have prayed for the following reliefs:-

(i) That this Hon'ble Court be pleased to declare the rejection of application for condonation / relaxation of the procedural lapse of non-generation and filing of Bills of Export against the supply of goods made to Sez Units as arbitrary and discriminative;

(ii) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari under Article 226 of the Constitution of India,

calling for the records pertaining to the impugned communication / orders / minutes of meetings, rejecting the application for condonation of the

procedural lapse of non-generation and filing of Bills of Export against the supply of goods to SEZ Unit and after going into the question of legality and

propriety thereof, be pleased to quash and set aside the orders / communication passed / issued by the Policy Relaxation committee of the DGFT and

direct the Respondents to waive the requirement of preparation / filing of Bills of Export for discharge of export obligation against each of the

Advance Authorization;

(iii) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or directing ordering and directing the

Respondents by themselves, their subordinate servants and agents to relax the requirement of filing the Bills of Export for discharge of exports

obligation against each of the Advance Authorizations;

(v) for costs of this Petition;

(vi) for such further and other reliefs as the nature and circumstances of the case may require.

9. Shri Prasanna Prasad, learned counsel appearing for the respondents has argued before this Court that the petitioner / Company has imported raw

material (duty free) and as stated by the petitioners after manufacturing of goods, the goods were exported by supplying them to the importer located

at Special Economic Zone, Dahej, Gujrat and at no point of time Bill of Export was submitted by the petitioner as required under the statute, and

therefore, the petitioner / Company does not have any other choice except to pay custom duty + applicable interest.

He has further stated that the petitioner / Company has stated in the writ petition that the Company has received purchase order from M/s DIC Fine

Chemical Private Limited, a SEZ Unit situated in Gujrat, for supply of Soya Long Oil Alkyd Resin falling under Tariff Item No.3907 50 00 of the

Schedule II to CETA, 1985 and based upon the purchase order received for supply of the aforesaid goods to SEZ Unit, which is treated at par with

export, the petitioner has applied to the Director General of Foreign Trade for issuance of Advance Licences / Authorizations and five Advance

Authorizations were issued by the Officer of the Joint Director General of Foreign Trade, Bhopal / Indore in the year 2013.

He has further stated that the petitioner has imported the specified goods / raw material permitted under the aforesaid Advance Authorizations

required of manufacturing of the said Soya Long Oil Alkyd Resin to be supplied to SEZ Unit and after completion of export against Advance

Authorization, the petitioners were required to get the same discharged / closed by submitting relevant documents such as proof of export, which

means a Bill of Export. The petitioner, at no point of time, has submitted the Bill of Export, and therefore, the Director General of Foreign Trade

was justified in sending letter and instructing the petitioners to regularize the licence by paying all custom duties + applicable interest.

He has further stated that as per the statutory provisions, the petitioners were

required to submit proof of export to SEZ Unit and proof of export is

Form No.98-VI of Custom Manual. He has also stated as per Section 30 (3) of the SEZ Rules, Bill of Export is a mandatory requirement and no claim

for export can be accepted in absence of proper authorization, and therefore, letters were issued to the petitioner / Company, which are impugned in the respect writ petition.

10. Heard learned counsel for the parties at length and perused the record.

11. In the present case, the facts reveal that the petitioners have received purchase order from M/s DIC Fine Chemical Private Limited, a SEZ Unit

situated in Gujrat and based upon the purchase order, the petitioner applied to the Director General of Foreign Trade for issuance of Advance

Licences / Authorizations. Advance Authorizations were issued by the Officer of Joint Director General of Foreign Trade, Bhopal in the year 2012

â?" 13 and the petitioners, as stated by them, imported the specified goods / raw material permitted under the Advance Authorization required for

manufacture of said Soya Long Oil Alkyd Resin to be supplied to SEZ Unit.

12. As per the export import policy, the petitioners were under an obligation to comply with the provision of Foreign Trade Procedure Hand Book

Proviso 4.25, which provides that authorization holder shall furnish prescribed documents in ANF 4F (Aayat Niryat Form) in support of fulfillment of

EO and as per the conditions, which are reflected for physical export i.e. Bill of Export, is to be submitted. Relevant extracts of the Foreign Trade

Procedure Hand Book reads as under:-

Advance 4.24A Exporters eligible for such Authorisations shall file an application in ANF 4A to

Authorisation for RA concerned. All provisions as to Advance Authorisation given above would

Annual apply except the following:

Requirement

(i) RA while issuing Authorisation shall mention technical characteristics quality and specifications in respect of such inputs:-

Alloy steel including stainless steel, copper alloy, synthetic rubber, bearings, solvents, perfumes/ essential oils / aromatics chemicals, surfactants, relevant

fabrics and marble.

(ii) Authorisation holder shall have flexibility to export any product falling under export product group using duty exempted material.

(iii) Within eligible entitlement, an exporter may apply for one or more than one authorisations in a licensing year, subject to condition that against one port of registration only one authorisation can be issued for same product group. One time enhancement / reduction of the authorisation shall be available in terms of paragraph 4.21 above.

(iv) On completion of EO against one or more authorisations, all issued in same licensing year, entitlement of an exporter for that licensing year shall be deemed to be revived by an amount equivalent to EO completed against authorisation(s).

(v) In respect of export product for which Standard Input Output Norms (SION) does not exist, the authorization holder shall submit an application in Aayaat-Niryaat Form along with prescribed documents to NC before making the shipment. The applicant shall also furnish Advance Authorisation for Annual Requirement No. and date along with the file No.. Form which the same was issued in the convering letter to the application.

Fulfillment of 4.25 Authorisation holder shall furnish prescribed documents in ANF 4F in support

Export Obligation fulfillment of EO.

Discharge of 4.25A Quality Based Advance licences issued prior to 01.04.2002 shall be disposed off

export obligation as per Public Notice No.79 dated 2.1.2006, PN 151 dated 26.2.09, as amended

against advance from time to time.

licences issued

prior to 1.4.2002

Redemption / No 4.26 In case EO has been fulfilled, RA shall redeem the case. After redemption, RA

Bond Certificate shall forward a copy of redemption letter indicating shipping bill number(s),

date(s), FOB value in Indian rupees as per shipping bill(s) and description of export product in respect of shipment which were taken into account for the purpose of fulfillment of EO to Customs authority at port of registration. Such details shall also be placed by the Zonal Offices in their website immediately after issuance of export obligation discharge/redemption letter / No Bond Certificate (in case of 'No BG / LUT' facility) and by DGFT Hqr in DGFT website on monthly basis for customs authority to access it from website.

GUIDELINES FOR APPLICANT

(Please See paragraph 4.46, 4.47 of HBP)

1. Application will be filed online using digital signature only.
2. Please upload following details
 - a. For physical exports:
 - i. e-BRC / Bank Certificate of Exports and Realisation in the form given at Appendix 2U or Foreign Inward Remittance Certificate (FIRC) in the case of direct negotiation of documents or appendix 2L in case offsetting of export proceeds.
 - ii. EP copy of the shipping bill(s) containing details of shipping bill wise export indicating the shipping bill number, date, FOB value as per shipping bill and description of export product.
 - iii. A statement of exports giving details of shipping bill wise exports indicating the shipping bill number, date FOB value as per shipping bill and description of export product.
 - iv. A statement of Import indicating bill of entry wise item of imports, quantity of imports and its CIF value.
 - v. FOB value of export for the purpose of V.A. Shall be arrived at after excluding the Foreign Agency Commission, if any.
 - vi. In case where CENVAT credit facility on inputs have been availed for the exported goods, the goods imported against Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer) even after completion of export obligation, for which the authorisation holder shall produce a certificate form either the jurisdictional Central Excise Supdt. Or Independent Chartered Accountant or Cost Accountant, at the option of the exporter.

13. As per the aforesaid executive instruction, the "Aayat Niryat Form" provides for submission of proofs by furnishing "Bill of Export". The

petitioners were required to submit proof of export to SEZ Unit and the proof of export is mentioned in Form 98-VI of the Custom Manual.

14. Not only this, as per Section 30 (3) of the SEZ Rules, Bill of Export is a mandatory requirement and no claim can be accepted in absence of

proper authorization. Section 30 of the SEZ Act reads as under:-

"30. Procedure for procurement from the domestic Tariff Area." (1) The Domestic Tariff Area Supplier supplying goods to a Unit or Developer

shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE-1 referred to in

Notification number 42/2001-Central Excise (NT) dated the 26th June, 2001 in quintuplicate bearing running serial number beginning from the first day

of the financial year.

(2) Goods procured by a Unit or Developer, on which Central Excise Duty exemption has been availed but without any availment of export

entitlements, shall be allowed admission into the Special Economic Zone on the basis ARE-1.

(3) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the

basis of ARE-1 and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer

before arrival of the goods.

Provided that if the goods arrive before the Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by

the Specified Officer and shall be released to the Unit or Developer only after completion of the assessment of the Bill of Export."

15. Undisputedly, the petitioners have failed to comply with the aforesaid requirement and for the reasons best known to the petitioners, the petitioners

have not impleaded the SEZ Unit, Dahej as respondent, which is a necessary party. Whether the goods were received at SEZ Unit, Dahej or not,

could have been answered by the SEZ Unit, Dahej only. The petitioner have also not complied various statutory provisions by not furnishing Bill of

Exports.

16. Learned counsel for the petitioners has vehemently argued before the Court

that the controversy involved in the present case stands concluded on account of judgment delivered by the Bombay High Court in the case of Larsen & Toubro Limited v/s Union of India & Others (W.P. No.14375/2016) dated 12.09.2017.

17. Paragraph 41 of the aforesaid judgment reads as under:-

41. Then the certificate from the Central Excise in original dated 18.04.2013 issued by the Superintendent of Central Excise, Belapur, certifying

exempted material with specification imported against advance authorization and used in the manufacture of the resultant product was enclosed.

18. This Court has carefully gone through the aforesaid judgment. The judgment delivered in the aforesaid case is distinguishable on facts as in the

said case the officer of the Central Excise Department issued a certificate dated 18. 04.2013 certifying exempted material with specification imported

against Advance Authorization and used in manufacture of resultant product. The fact is reflected in paragraph 41 of the aforesaid judgment. Also

the Officer of SEZ, as per paragraph 54 of the aforesaid judgment, has certified that the goods have been received.

19. In the present case, the petitioners have opted not to implead SEZ as a respondent, and therefore, as there is no verification on the part of the

Officer of the SEZ, the petitioners are not entitled for any relief of whatsoever kind on basis of the judgment delivered in the case of Larsen & Toubro

(supra).

20. It is true that the SLP against the judgment delivered in the case of Larsen & Toubro (supra) has been dismissed but the SLP has been dismissed

in limine at admission stage and it does not amount to precedence keeping in view the judgment delivered in the case of State of Uttar Pradesh &

Others v/s Rekha Rani reported in (2011) 11 SCC 441. Thus in short, the petitioners in the present case, applied for issuance of Advance

Authorizations for duty free import of goods in India against supplies to be made to the purchaser and various Advance Authorizations were issued

from time to time. The petitioners' stand is that the petitioners have exported the goods manufactured through M/s DIC Fine Chemical Limited, a SEZ

Unit at Dahej, and therefore, they are not liable to pay any duty keeping in view the Foreign Trade Policy, 2004-2009. The proof required for the

purpose is Bill of Export and the petitioners have not been able to submit

the Bill of Export. Whether the petitioners have supplied goods to the SEZ Unit, Gujrat or not, can only be looked into after petitioners file a reply to the Department in respect of the letters issued to the petitioners. It is purely question of fact and can be looked into by the competent authority.

21. In the considered opinion of this Court, the question of interference, at this stage in the peculiar facts and circumstances of the case, does not arise.

Accordingly, the present Writ Petition stands dismissed.

The order passed by this Court in the present case shall govern the connected petition also, and therefore, the connected writ petition i.e. W.P.

No.18252/2017 also stands dismissed.

Let a copy of this order be kept in the connected petition also.

Certified copy, as per rules.