

(2021) 04 DEL CK 0143

In the Delhi High Court

Case No : Civil Writ Petition No. 4652 Of 2021, Civil Miscellaneous Application
No. 14311 Of 2021

M/S CL International

APPELLANT

Vs

Directorate General Of Foreign Trade

RESPONDENT

Date of Decision : 15-04-2021

Acts Referred:

Foreign Trade (Regulation) Rules, 1993 — Rule 7(1)(k)

Foreign Trade (Development & Regulation) Act, 1992 — Section 8, 9(2), 13, 15, 17

Citation : (2021) 04 DEL CK 0143

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Ramakant Gaur, Vineet Malhotra

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through video conferencing.

2. The present petition challenges the order dated 21st December 2018 (wrongly mentioned as 21st December 2019), passed by the Deputy Director

General of Foreign Trade, Ministry of Commerce, Govt. of India, by which the Petitioner was placed in the "Denied Entity List" (hereinafter,

"DEL"), under the provisions of the Foreign Trade (Development & Regulation) Act, 1992.

3. Ld. counsel for the Petitioner submits that the said order dated 21st December 2018 was served upon the Petitioner along with the show-cause

notice dated 22nd April 2019. He submits that immediately after having being served with the show-cause notice and the said order, the Petitioner

approached the Deputy Director of Directorate General of Foreign Trade

(hereinafter, ""DGFT"") on 2nd May 2019, seeking supply of certain documents relied upon in the show-cause notice. The Petitioner also sought for a personal hearing in the matter.

4. This request has been reiterated from time to time i.e., on 6th May 2019 and on 17th November 2020. On 2nd March 2021, an interim reply has also been served upon the DGFT, again giving certain submissions on behalf of the Petitioner, as also seeking the material relied upon in the show-cause notice. The grievance of the Petitioner in this petition is that the material, on the basis of which the show-cause notice and the said impugned order were issued, has not been supplied and no reply has been received to these representations as also the interim reply to the show-cause notice given by the Petitioner.

5. Mr. Vineet Malhotra, Id. Counsel appearing for the Respondent, submits that the Petitioner ought to have ideally filed an appeal against the order dated 21st December 2018, under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992.

6. Heard Id. counsels for the parties and perused the record.

7. A perusal of the order dated 21st December 2018 shows that the authorities have called upon the Petitioner as under:

â??Vide DRI F. No. DRI/IIQ-CI /50D/Enq-23/2018 letter, the Directorate of Revenue Intelligence has requested this office that in the interest of government revenue, post export benefits under Chapter 3 to your company be disallowed till finalization of investigation by the DRI.

Therefore, in exercise of the power under Section 9(2) of FTDR Act , 1993 (as amended) read with Section 7.1(a), 7(1)(c), 7(1)(i) of the

Foreign Trade (Regulation) Rules , 1993 and DEL circular dated 31.12.2003 of DGFT , M/S C.L. International , 43/41, West Punjabi Bagh

, New Delhi , (IEC No. 0594060338) is placed under DEL and all their pending/future applications for any benefits/authorizations from

this office/any other offices of DGFT under the Foreign Trade Policy /Procedures 2015-20 shall be refused . If no reply is received from the

firm within 15 days from the date of receipt of this order than it shall be presumed that firm has nothing to say in this regards and further

action shall be taken against the Firm/company as per the provisions of FTDR Act

and rules in force.â??

8. It is not in dispute that the said order was served upon the Petitioner along with a show-cause notice dated 22nd April 2019. In the said show-cause

notice, the Petitioner was called upon to reply as under:

â??6. Now, therefore, in exercise of the powers vested in me under section 13 and 17 of Foreign Trade (Development & Regulation) Act,

1992, as amended from time to time. I hereby call upon you to show cause by 30.04.2019 as to why

(a) Your company's name should not continue to be placed in Denied Entity List (DEL) so that benefit under Foreign Trade Policy (FTP) are

stopped including future refused of Authorization/Scrip under Rule 7(1)(K) of the Foreign Trade (Regulation) Rules, 1993, as amended

from time to tie and

(b) Your IEC should not be suspended under Section 8 for violation of Rule 7.1 (K) of the FTDR Act, 1992 as amended in 2010â??

9. A perusal of both these documents clearly shows that the order putting the Petitioner in the DEL category was a temporary order. The Petitioner

was given an opportunity to file a reply to the said order and the said order was sent to the Petitioner along with a show-cause notice. In the show-

cause notice also, the Petitioner has been asked as to why the Petitioner ought not to be continued to be placed in the DEL. Thus, there was no

finality, and no period was mentioned, as to for how long the Petitioner was put on the DEL.

10. The clear impression from the reading of the said two documents, i.e., the order dated 21st December 2018 and the show-cause notice, is that

after the Petitioner submits a reply, a comprehensive decision was to be taken as to whether the Petitioner was to be continued to be put in the DEL

or not and if so for what period. Since there has been no reply whatsoever in response to the repeated communications of the Petitioner, directions are

liable to be issued so that the matter reaches a conclusion.

11. Considering the nature of the matter and the fact that the show-cause notice relies upon various documents, the following directions are issued:

i. The documents relied upon by the Respondent, in support of the order passed by 21st December 2018, and in the show-cause notice, shall be

supplied to the Petitioner within a period of four weeks i.e., by 15th May 2021.

ii. In respect of the said documents which are supplied, the Petitioner shall be given an opportunity to file an additional response, to the said show-

cause notice within a period of four weeks, after the service of the said documents, i.e., by 15th June 2021.

iii. Upon receiving the additional reply from the Petitioner, a personal hearing shall be fixed, and the final order shall be passed on or before 15th

August 2021.

12. The remedies of the Petitioner, in respect of the final decision which shall be taken by the Respondents, are left open, to be availed of in

accordance with law, if required.

13. With these observations, the present petition along with all pending applications, is disposed of.