(2013) 09 DEL CK 0270

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2704 of 1991

M/s. Frick India Ltd. APPELLANT

Vs

UOI and Another RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 200 ECR 450

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Advocate : Shobha and Ms. Jyoti Rana, for the Appellant;

Judgement

Sanjiv Khanna, J.—Frick India Limited has filed the present writ petition under Article 226 for the following reliefs:-

(a) issue writ, direction or order in the nature of mandamus or any other appropriate writ, direction or order commanding the respondents to allow to the petitioner Cash Assistance in lieu of excise duty terms of the letter No. F.1/2/69-EAC dated 7.1.1970 of the Government of India, Ministry of Foreign Trade, New Delhi;

(b) issue writ, direction or order in the nature of mandamus or any other appropriate writ, direction or order calling upon the respondents to remit to the petitioner the amount of Rs. 12,84,232.18 as per statement of Excise Duty not refunded by Respondent No. 2 on World Bank Jobs as stated in the statement annexed to the letter dated 5.3.1990;

(c) issue such other writ, direction or order calling upon the respondents to give the petitioner their dues;

(d) allow the costs of this petition in favour of the petitioner and against the respondents;

(e) grant the petitioner such other and further reliefs as they may be found entitled to in the facts and circumstances of the cases.

The petitioner herein is a manufacturer and supplier of air conditioning plants and refrigerating equipments. Pursuant to orders placed by National Dairy Development Board, Anand (Gujarat) and Indian Dairy Corporation, Baroda, the petitioner had supplied air conditioning plants all over India. Some of these projects were financed by International Bank for Reconstruction and Development (IBRD)/International Development Association (IDA). These supplies were made at international prices under international competitive bidding for World Bank projects.

2. The petitioner claims that they became entitled to refunds/cash assistance in terms of the policy of the respondents incorporated in letter No. F.1/2/69-EAC dated 7th January, 1970 concerning cash assistance in lieu of excise duty payable on supplies made under IBRD/IDA projects in India.

3. The petitioner in the writ petition and rejoinder affidavit has not stated the dates as to when the said supplies under IBRD and IDA projects in India were made. However, it is stated that the petitioner had received cash assistance and replenishment as per the letter dated 7th January, 1970. Replenishment was in respect of imports as per Volume II of the Hand Book. Cash assistance was at the rate prescribed in various instructions issued by the Government. The dates on which import replenishment and cash assistance was paid is not indicated or stated in the writ petition or rejoinder affidavit. The petitioner, however, claims that they did not receive drawback on customs and central excise duty paid. These, for the sake of convenience, have been referred to as supplementary cash assistance. The petitioner claims that they had made applications for supplementary cash assistance between the period March, 1979 till December, 1983. Some applications have been placed on record.

4. The respondents through the Controller of Imports and Exports informed that discrepancies were noticed in the applications. Petitioner was asked to rectify the deficiencies within 30 days and instructed that their application would be closed if the deficiencies were not removed within the aforesaid time. One of the deficiencies which was highlighted was to the effect that the excise duty was paid under protest and hence the application cannot be considered unless the petitioner furnishes certificate issued by the excise authorities that the excise duty paid on the relevant gate passes was final. It transpires that the petitioner had not paid any excise duty whatsoever but had furnished bank guarantee in lieu of the excise duty payable, pursuant to writ petition which was pending before the Punjab and Haryana High Court. The petitioner had filed the said writ petition sometime in the year 1972 and by an interim order could make "payment" by way of bank guarantee. In other words, no duty was actually paid but bank guarantee for the duty payable/demand was furnished. The said writ petition was dismissed by the Single Judge on 23rd April, 1982 and the Letters Patent Appeal was dismissed by the Division Bench on 4th June, 1982. Thereafter, the petitioner filed Special Leave to Appeal before the Supreme

Court. By order dated 21st January, 1983, the Supreme Court had directed the petitioner to pay the balance amount of Rs. 69 lacs in monthly instalments of Rs. 10 lacs each commencing from the first day of April, 1983. The petitioner had already paid Rs. 10 lacs vide letter dated 19th July, 1982 to the excise authorities.

5. After the aforesaid directions of the Supreme Court, the petitioner once again revived their request for payment of supplementary cash assistance by writing letters between the period 1983 to 1984. It would be appropriate to reproduce one such letter dated 22nd September, 1983, which has been filed along with the rejoinder affidavit:-

September 22, 1983

The Joint Chief Controller of Imports & Exports

CLA, IP Estate

New Delhi

Subject: Refund of excise duty against supplies made to IDA/IBRD Project by way of supplementary cash assistance.

File No: A-31/JM'' 80/EP/IDA/CLA.

Dear Sir,

With reference to the above, the refund of excise duty was pending with your office due to the fact that the equipment supplied by us to the various projects were cleared against bank guarantees. We had filed a case against Central Excise Department at Faridabad on the rate of duty and we finally lost the case in the Supreme Court. We have now paid the excise duty in cash through PLA to the Central Excise authorities at Faridabad and enclosed, we are sending you a certificate to this effect.

The above certificates pertains to Gate pass Nos. 302 dated 12.1179, 304 dated 13.11.79 and 295 dated 3.11.79.

Since, we have now paid the excise duty in cash we shall be grateful if you please have the same refunded to us at the earliest.

Thanking you,

Very truly yours

For Frick India Limited

Rajan Iyer

Commercial Officer

6. A perusal of the aforesaid letter elucidates that the petitioner acknowledged that they had paid the excise duty and had simultaneously mentioned that they

had "finally lost the case before the Supreme Court". The reason why we have reproduced the said letter is that the petitioner has submitted that the appeal filed before the Supreme Court was admitted and the civil appeal was dismissed on 21st December, 1989. The present writ petition was filed on 23rd August, 1990 and thus delay and laches should not be a ground to dismiss the present writ petition.

7. We have noted the prayers made in the writ petition and now record that the supplementary cash assistance relates to the period between the years 1977 to 1983. The contention of the petitioner that they had waited for the decision on the civil appeal and thereafter filed the writ petition is incorrect. It is apparent that the Supreme Court vide interim order dated 21st January, 1983 had asked the petitioner to pay the entire amount of duty including the duty payable on the supplies made for IBRD and IDA aided projects in India. The petitioner, as is apparent from the aforesaid letter dated 22nd September, 1983, had made a categorical claim after making payment of the duty. Central excise authorities upon receipt of duty had removed/deleted the words "under protest" which were recorded on the gate passes. Simultaneously, we find that the petitioner was informed about the rejection of their request of the supplementary cash assistance by the Controller of Imports and Exports vide letters which were written on different dates between the period 1982 to 1984. In one such letter, the reason for rejecting the prayer of the petitioner has been recorded and mentioned as under:-

You had not submitted the original and un-conditional Gate Passes for making claim for refund or Excise Duty and have not furnished documentary evidence showing and supporting as to how you have made claim of excise duty after such a long time. Therefore, your request for refund of Excise Duty received in this office on 29-9-1983 is time barred.

8. Similar reasons were given/recorded for rejection of other applications for grant of "supplementary cash assistance". These letters of rejection mention that the petitioner was at liberty to file an appeal as per the terms of the Hand Book of Imports & Exports Procedure, 1984-85. The petitioner had filed appeals raising the following grounds:-

The original equipment was cleared from our factory against bank guarantees in favour of the Central Excise Department, Faridabad due to a dispute between us and the Central Excise Department over the levy of excise duty on complete refrigeration equipment. We had taken up the matter in the High Court and then in the Supreme Court and finally lost the case and hence in lieu of the Bank Guarantee we had paid excise duty in cash. This matter was explained to you vide our letter dated 24th September, 1983 alongwith certificate from the Central Excise Department stating that we have now paid excise duty in cash in lieu of bank guarantee which was delivered to your office vide your receipt No. 247454 dated 29.9.1984. Further to that letter we were asked for various clarifications which we have replied to you in time. Your contention that we have not given you any documentary evidence in support of our claim is wrong since we have sent to you the certificate from the Excise Department.

9. These appeals were rejected by the appellate authority on different dates within calendar year 1984 itself.

10. It is, therefore, apparent that the petitioner after the initial rejection had preferred appeals. The petitioner did not wait till decision of the Supreme Court to prefer appeals. The petitioner thereafter has waited from 1984 till 23rd August, 1990 to file the present writ petition. The delay in the present case is almost of six years. This delay cannot be explained and washed away on the ground that the Special Leave to Appeal was pending before the Supreme Court and was decided on 21st December, 1989. The civil appeal pending before the Supreme Court related to a different issue; and related to classification of the goods manufactured by the petitioner under Tariff Item No. 29A. Pendency of the litigation before the Supreme Court had not barred or prohibited the petitioner from making claim for refund of duty already paid. Understanding of the petitioner was the same as they had filed applications for payment subsequent to payment of duty between the years 1982 to 1984 and upon rejection of those applications, appeals were preferred but were rejected in 1984.

11. Learned counsel for the petitioner has submitted that the delay in the present case should be ignored and the petitioner should not be denied benefit of what is due in terms of the policy. Reliance is placed upon Constitution Bench''s judgment in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, wherein the Supreme Court has observed that a writ court may not enquire into belated or stale claims. This is not a rule of law, but a rule of practice based on sound and proper exercise of discretion. Moreover, there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain a petition. It was observed that Fundamental Rights are precious and the court should not shy away from protecting innocent parties.

12. Similarly, in Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, it has been observed that no time limit or limitation period has been prescribed under the Constitution, but over a period of time the Superior Courts have evolved several rules of self-imposed restraint including writ Court may not enquire into belated or stale claims and would deny relief to a person who is found guilty of laches. The underlying principle of this rule is that, the one who is not vigilant and does not seek intervention of the Court within a reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right, cannot be allowed to press belated claims. But no straightjacket formula can be applied. Delay and laches may not be a ground to dismiss and throw out an illiterate litigant or a person belonging to marginalized section who is dependent upon a third person to defend his fundamental rights. Royal Orchid Hotels Limited (supra) was a case under the Land Acquisition Act. In the said decision reference was made to the observations of the Supreme

Court in M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others, In the said case the appellant before the Supreme Court had offered an explanation for not raising the question of legality. The authority had proceeded under a mistake of law as to the nature of claim. It was observed that nature of claim, breach of fundamental rights, remedy claimed and how and why delay arose are relevant factors.

13. In Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, question of long delay and whether a writ petition should be dismissed on that account was raised and the following principles have been elucidated:-

(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the Petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the Petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the Petitioner chooses to believe in regard to the remedy.

(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

14. The petitioner herein is a company which has been involved in several litigations and is not an illiterate litigant, who lacked resources and thereby was unable to invoke writ jurisdiction earlier. We have highlighted the conduct of the petitioner. They had made specific applications after making payment of the duty and had also filed appeals. Yet when the appeals were rejected, the petitioner simply waited and slept. They did not approach the Court within a reasonable time. The writ petition was filed in 1990, after a lapse of six years from the date of rejection of the claims by the appellate authority. The claims relate to an earlier period between 1979 to 1983. Normally, there is weeding out of files/ records in Government departments. It is almost impossible to fully examine, ascertain and verify old claims. The respondents in the counter affidavit have stated that they do not have record of the petitioner''s claim or applications and

have solely relied upon the documents annexed with the writ petition.

15. We have recorded and reproduced the prayer clause of the writ petition. The petitioner has not specifically challenged or questioned the appellate orders or the orders of rejection. All appellate orders and orders of rejection have not been enclosed with the writ petition or the rejoinder affidavit. In the absence of the actual orders in all cases, we do not know the reasoning elaborated in each order. We have quoted some of the orders and observed that similar reasoning was highlighted, but it cannot be said with absolute certainty that the order of rejection in each case was identically worded or for similar reasons. Failure to specifically challenge the orders is another legal flaw and difficulty. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. No costs.