(2011) 11 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No. 33949 of 2011 (GM-RES)

M/s. Spml Infra Limited, (Formerly Subhash Projects and Marketing Ltd.,) APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0017

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Chetana Razmesh, for Sri V Raghuraman and Sri Chythanya, for the Appellant; N.R. Bhaskar, Sr. CGSC, for the Respondent

Judgement

B.S. Patil

1. In this writ petition, petitioner is challenging the communications dated 11.07.2011 issued by the Regional Joint Director General of Foreign Trade, Government of India, Ministry of Commerce, produced collectively at Annexure-A and also the Minutes of the meeting of Policy Interpretation Committee held on 15.03.2011 produced at Annexure-B. As per the impugned communications dated 11.07.2011, petitioner is called upon to refund the so called excess payment made to it in connection with Duty Draw Back based on the Deemed Export Scheme.

2. Petitioner is a company engaged in the business of construction of various power and water supply projects and supply of materials to such projects. According to the petitioner, as per the Foreign Trade Policy 2004-09 of the Government of India, supply of capital goods and spares to power projects were required to be treated as ''Deemed Exports'' subject to the condition that the procedure under International Competitive Bidding (ICB) was followed. It is their case that under Chapter-VIII of Foreign Trade Policy 2004-09 suppliers under Deemed Export would be entitled for Duty Draw Back claims of the duty paid on the capital goods supplied to power projects.

3. In terms of the provisions of the Foreign Trade Policy, petitioner had applied for drawback of excise duty paid on the capital goods supplied to power project. The Office of the Joint Director General of Foreign Trade intimated the petitioner that the rebate claim made by the petitioner had been accepted. In furtherance thereto, petitioner was issued with cheques towards the drawback claims totally in a sum of Rs.3,30,80,670/-. However, by the impugned communications, petitioner has been directed to refund the said drawback amount sanctioned by the Joint Director General of Foreign Trade amounting to Rs.2,22,74,739/- on the ground that the Policy Interpretation Committee of Director General of Foreign Trade in its meeting held on 15.03.2011 had taken a policy decision in the matter which has led to the 3rd respondent rescrutinising the claim made by the petitioner and on rescrutiny, it was found that the petitioner was not entitled for the said claim. Consequently, as per the impugned communications collectively produced at Annexure A, petitioner is called upon to refund the amount paid to the extent mentioned in those communications. It is in this background that the petitioner has approached this Court challenging both Annexures-A & B i.e. the communication and the minutes of the meeting respectively.

4. Several contentious on merits are urged by the petitioner referring to various provisions of law. Learned counsel appearing for the respondent seeks time to file a detailed statement of objections meeting all these contentions. However, having regard to the glaring mistake committed in the decision making process by the respondents as is discernable from the impugned communications produced at Annexure-A, in that, a decision to call upon the petitioner to refund the amount has been taken without providing an opportunity to the petitioner to have their say in the matter and that an opportunity is proposed to be given to the petitioner to give representation after the decision is made on the merits of the claim, I am of the considered view that it is unnecessary for this Court to examine the merits of the contentions raised by the parties. It is necessary to notice here that the petitioner''s claim has been accepted and the amount is already paid. If the authorities want to have a relook in the matter, then the same cannot be done behind the back of the petitioner as it will have a very serious consequence on their rights.

5. Therefore, the impugned communications dated 11.07.2011 produced collectively at Annexure-A and the Minutes of the Meeting held on 15.03.2011 produced at Annexure-B insofar as it affects the interest of the petitioner are hereby set aside, Respondent - authorities are at liberty to notify the petitioner, hear them and thereafter proceed to take a decision in the matter in accordance with law. All contentions raised by the petitioner including the authority and jurisdiction to initiate such action and also the contentions raised by the respondents are kept open. Writ Petition is accordingly disposed of.