
(2020) 03 DEL CK 0101

In the Delhi High Court

Case No : Civil Writ Petition No. 6045 Of 2016

M/S Wadpack Private Limited

APPELLANT

Vs

Director General Of Foreign Trade & Anr

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Special Economic Zones Rules, 2006 — Rule 30, 30(3), 30(9)

Citation : (2020) 03 DEL CK 0101

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Karan Sachdev, Kunal Kapoor, Akshay Makhija, Kriti Awasthi

Final Decision : Dismissed

Judgement

“

Navin Chawla, J",,,

1. This petition has been filed by the petitioner praying for a Writ of Mandamus directing the respondent no. 1 to condone the procedural lapse of,,

supplying the goods to the SEZ units only under ARE-1 without Bills of Exports with respect to its Advance Authorization No. 0710063364 dated,,

02.03.2009 as also for issuance of Redemption Certificate to the petitioner with respect to the said Advance Authorization.,,,

2. The facts in brief are that the petitioner was issued the Advance Authorization by the respondent no. 2 on 02.03.2009. The petitioner claims to have,,

supplied the finished goods, that is corrugated boxes, to Nokia Semens and its units in SEZ units between 2009 to 2011. On 22.05.2012, the petitioner",,,

submitted the documents to respondent no. 2 for issue of Export Obligation Discharge Certificate (EODC). The respondent no. 2 in turn called upon,,

the petitioner to furnish the Bills of Exports towards goods supplied to the SEZ units as also the Bank Realization,,

Certificate in Appendix-22A of the Hand Book of Procedure. The petitioner, while submitting The Bank Realization Certificate, instead of Bills of",,,

Exports, submitted the ARE-1 as proof of making exports against Advance Authorization. The petitioner claims that due to an inadvertent error, the",,,

Bills of Exports were not filed.,,,

3. Pursuant to an order for personal hearing being granted to the petitioner, passed by this Court, the petitioner approached the Policy Relaxation",,,

Committee (PRC) seeking condonation of this lapse. The PRC in its meeting dated 02.02.2016 observed as under:-,,

â??The case was discussed again at length. The committee was of the view that in terms of Para 4.12 of FTP, 2009-14, the applicant was",,,

require to mention consumption of exempted materials on export documents along with file No/Licence No against that exports are being",,,

made towards discharge of export obligation. In terms of Para 4.25 of HBP, 2009-14 read with ANF-4F for discharge of export obligation",,,

the applicant should submit original copy of Shipping Bill/Bill of Export, Excise Invoice and Bank Realisation Certificate. However, the",,,

applicant has failed to submit these documents except BRC Certificate issued by Superintendent Central Excise cannot substitute the",,,

documents prescribed in ANF-4F because it does not prove that duty free imported goods were consumed in the resultant products have",,,

been supplied to SEZ unit towards discharge of export obligation against Advance authorization in question. The Committee, therefore, did",,,

not accede to the request. The applicant is hereby directed to get the case regularized in terms of Para 4.49 of Hand Book of Procedures",,,

2015-20.â??,,

4. The learned counsel for the petitioner submits that though the petitioner admits its mistake of not submitting the Bills of Exports as they were not,,

generated/filed, the petitioner, in form of ARE-1; its own affidavit alongwith statement showing use of imports for finished goods duly certified from",,,

the Chartered Accountant; and a certificate confirming the receipt of goods in the SEZ as also the Bank Realization Certificate, has produced",,,

sufficient proof to show its entitlement to the fulfillment of exports obligation

under the Advance Authorization and therefore, was entitled to the",,,
issuance of the EODC. He places reliance on the judgment of the Bombay High Court in Larsen & Toubro Limited vs. Union of India, 2018 (360)",,,
ELT 289 (Bom.), to submit that in a similar circumstance, the High Court had held that where the ARE-1 form had been supplied, it was only a",,,
technical obligation of the said form not mentioning the Advance Authorization Number in the initial copies on which the claim of the petitioner herein,,
had been rejected, and that the PRC should have accepted the explanation given by the petitioner therein instead of penalizing the petitioner therein for",,,
such procedural lapse.,,

5. The learned counsel for the petitioner further places reliance on the Circular dated 11.07.2012 issued by the DGFT, granting relaxation under Para",,,

2.5 of the Foreign Trade Policy condoning procedural lapse of non-mention of EPCG licence number and date on the shipping bills. He submits that,,

similar lapse of the petitioner of mentioning the Advance Authorization number and date on the ARE-1 should have been condoned by the PRC.,,

6. The learned counsel for the petitioner further submits that even in ARE-1, it is only the self-declaration of the petitioner that is material. It is made",,,

only for the purpose of ensuring that the party does not obtain the benefit twice over for the same export. In the present case, apart from the",,,

certificate from the Chartered Accountant, the PRC itself has verified from the concerned Excise Department that the petitioner has not availed such",,,

benefits twice over. The learned counsel for the petitioner further submits that the ARE-1 has also been certified by the Customs Authority of the,,

SEZ.,,

7. On the other hand, the learned counsel for the respondents submits that the power of this Court while exercising jurisdiction under Article 226 of the",,,

Constitution of India is highly limited and does not extend to relaxation of the conditions contained in the Hand Book of Procedure, which rests",,,

exclusively with the PRC. Unless the decision of the PRC is found to be perverse, arbitrary and unreasonable, this Court cannot interfere with the",,,

same. He places reliance on the Judgment dated 26.09.2018 of this Court in W.P. (C) 10193/2018 titled Shashi Cables Ltd. vs. Directorate General of,,

Foreign Trade (DGFT) and Anr.,,

8. He further submits that the petitioner was well aware of the requirement of

submission of documents as prescribed in Paragraph 4.25 of the Handbook of Procedure (Volume-1), 2004-09 as evidence of fulfillment of export obligations imposed under the Advance Authorization. He refers to the "Guidelines For Applicants", which require copies of the shipping bills containing details of shipment effected or Bill of Export in case of export to SEZ unit, to be submitted for claiming such benefits. He further refers to the SEZ Rules, 2006 and specifically Rule 30(3) thereof, which requires the Bill of Exports to be filed by the supplier. He submits that the PRC exercises its powers only where it finds a case of genuine hardship or public interest involved. Merely because a party has not been vigilant, would not require PRC's interference."

9. The learned counsel for the respondent further submits that the reliance of the petitioner on the verification submitted by the Excise Department, would be of no relevance inasmuch as it is the Customs Authority which has to verify the factum of export against the Advance Authorization. He, further relies upon the judgment of this Court in *Holoflex Limited and Anr. vs. Union of India and Ors*, 2019 (2) TMI 1576, which distinguished the judgment of the Bombay High Court in *Larsen & Toubro Limited vs. Union of India*, 2018 (360) ELT 289 (Bom.), and observed that filing of Bills of Exports is not a mere formality but serves as a valuable check for ensuring that the goods deemed to have been exported are in fact received by the SEZ Unit and are accounted as Deemed Exports.

10. I have considered the submissions made by the learned counsels for the parties.

11. To answer the submissions made by the respective counsels for the parties, certain provisions of Foreign Trade Policy, Handbook of Procedure, and the SEZ Rules, 2006 need to be considered.

12. Paragraph 4.13 of the Foreign Trade Policy, 2004-2009, deals with "Advance Authorization Scheme" and provides that an Advance

Authorization is issued to allow Duty Free Import of input duty and physically incorporated in export directed (making normal allowance for wastage).

Such Advance Authorization can be issued either to manufacturer exporters or merchant exporters tied to support manufacturer(s) for inter-alia,

SL. No., Description, Committee

(i), "Fixation/modification of product

norms under all Schemes", Norms Committee

(ii), "Nexus with capital goods (CG)

and benefits under EPCG

Schemes", EPCG Committee

(iii), All other issues, "Policy Relaxation Committee

(PRC)

Special Economic Zone, shall be treated as proof of export.",,

xxxxxx,,

(11) The Unit or Developer may also procure goods from Domestic Tariff Area without availing exemptions, drawbacks and concessions on",,

the basis of invoice or transport documents, issued by the supplier:",,

Provided that such invoices or transport documents shall be endorsed to the effect that no exemptions, drawbacks and concessions have",,

been availed on the said supplies.â??,,

20. A reading of the above provisions would clearly show that the Bill of Export is an essential document to be submitted for claiming discharge of,,

export obligation under the Advance Authorization. The petitioner admits that in the present case it did not submit the Bill of Export and therefore,",,

claims exemption under Paragraph 2.5 of the FTP. It is further admitted that the ARE-1 Forms that were submitted with the Excise Department at,,

the time of supplies to the SEZ Unit did not bear the endorsement of the Advance Authorization Number or its date. It also did not specify the quantity,,

of input used by the petitioner in the goods that was so supplied. It is only when the PRC demanded submission of original ARE-1, that the petitioner",,

submitted copies of the ARE-1 with the Advance Authorization Number and its date stamped by itself on such ARE-1.,,

21. Besides, petitionerâ??s statement of having worked and manufactured boxes for the past 39 years further weakens his claim in the petition. There",,

is no explanation as to why the petitioner supplied goods only under cover of ARE-1 and not with Bill of Export except for it being an inadvertent,,

mistake. A market player in business for this long would be expected to comply with formalities and file all relevant documents timely.,,

22. As is evident from the reading of the Paragraph 2.5 of the FTP, exemption from following policy/procedure can be granted only in cases of",,

genuine hardship or adverse impact on trade or in public interest. In my opinion, it is not applicable for cases where the exporters, even bonafide, are",,,

not vigilant or are lax in compliance with the mandatory conditions. The onus cannot be shifted to the Authorities in such cases to retrospectively,,

determine if the petitioner had otherwise complied with all conditions of Advance Authorization.,,,

23. As held by this Court in Holoflex Limited (supra), filing of Bill of Export is not a mere formality but serves as a valuable check for ensuring that",,,

the goods deemed to have been exported are in fact received by the SEZ unit and are accounted as Deemed Exports. These goods, if they are to be",,,

claimed for export entitlement, are put to scrutiny by the Authorized Officer before they are allowed entry into the SEZ.",,,

24. The judgment of the Bombay High Court in Larsen& Toubro Limited (supra), can also be of no avail to the petitioner. In the said case, the Court",,,

was persuaded in favour of the petitioner therein as the claim of the petitioner had been verified and endorsed by the Range Superintendent, Central",,,

Excise and the Development Commissioner of the SEZ. It was found not to be just a self generated version or a self certification. In the present case,",,,

however, the petitioner has merely put a rubber stamp on the copy of ARE-1(s) subsequently without such claim having been endorsed from the",,,

concerned Authority. The affidavit and the certificate from the Chartered Accountant are also self serving documents. In fact, in the representation",,,

submitted to the PRC, the petitioner revised its claim from 409.571 MTs of corrugated boxes having a value of Rs.1,79,82,784/- having been supplied",,,

to 414.657 MTs of a value of Rs.3,25,36,085.70. This itself shows that the claim of the petitioner could not have been taken on its face value.",,,

25. The PRC had earlier rejected the claim of the petitioner vide its communication dated 17.12.2013 stating that the Committee was not satisfied,,

about the corroborating evidence produced by the petitioner. On challenge made by the petitioner, this Court by an order dated 16.12.2014, passed in",,,

WP(C) 8924/2014, titled M/s Wadpack Private Limited v. The Director General of Foreign Trade & Anr, granted opportunity to the petitioner to make",,,

a fresh representation alongwith all documents and further directed the DGFT to consider the same after affording an opportunity of hearing to the,,

petitioner. The PRC has again rejected the claim of the petitioner by the Impugned Decision taken in the meeting held on 02.02.2016, observing that",,,

the certificate issued by the Superintendent, Central Excise cannot substitute documents prescribed in ANF-4F as it does not prove that duty free",,

imported goods were consumed in the resultant products supplied to the SEZ Unit. As held by this Court in Shashi Cables Ltd. (supra), unless such",,

decision of the PRC is found to be perverse, arbitrary, capricious or unreasonable or otherwise contrary to the statutory framework, no interference",,

with the such decision is permissible in exercise of power of judicial review. In the present case, no such infirmity is found with the decision of the",,

PRC.,,

26. In view of the above, I find no merit in the present petition and same is dismissed. There shall be no order as to cost.",,