(2010) 06 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 2747 and 2748 of 2010

New Tech Pipes Ltd. APPELLANT

Vs

Approval Committee RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:
Special Economic Zones Act, 2005 — Section 16(1), 16(4)

Citation : (2010) 182 ECR 38 : (2010) 256 ELT 331

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Judgement

S.C. Sharma, J.—Regard being had to the homogeneous character of the controversy involved in the present cases, writ petitions were analogously heard and by a common order, they are being decided by this Court. Facts of Writ Petition No. 2748/2010 are narrated hereunder.

2. The petitioner before this Court, a limited company registered under the Companies Act, 1956, has filed the present petition for grant of stay of order dated 23-12-2009 passed by the Approval Committee, Indore Special Economic Zone. The contention of the petitioner is that the petitioner-company is located in Special Economic Zone, Pithampur and is engaged in the manufacture of steel shots and steel ingots. It has been further stated that a notice was issued on 30-11-2009 under the provisions of Section 16(1) of the Special Economic Zones Act, 2005, alleging that the petitioner-company has evaded payments of Central Sales Tax and Value Added Tax, by way of mis-declaration on documents and thus evaded payment of Customs Special Additional Duty. The petitioner-company has further stated that as notice was vague and was issued contrary to the provisions of Special Economic Zones Act, 2005, a writ petition was filed before this Court and the same was registered as Writ Petition No. 9108/2009, challenging the issuance of show cause notice. The petitioner has further stated that the aforesaid writ petition was disposed of by order dated 9-12-2009 with a liberty to the petitioner-company to file its reply to the show cause notice and

the Competent Authority was directed to take an appropriate decision within two weeks thereafter. The petitioner has further stated that the Competent Authority i.e. Approval Committee has vide its order dated 23-12-2009 cancelled the Letter of Approval (LoA) dated 24-5-2007, which was issued to the petitioner-company on the ground that there was enough reason to believe that there has been deliberate evasion of taxes on the part of the unit, systematically and repeatedly. The petitioner has further stated that being aggrieved by the order dated 23-12-2009 passed by the Approval Committee, Indore Special Economic Zone, an appeal was preferred as provided under the provisions of Special Economic Zones Act, 2005 before the Board of Approval, Special Economic Zones, Ministry of Commerce, Udyog Bhawan, New Delhi. However, as there is no provision under the Act for stay of the impugned order, the present writ petition has been preferred by the petitioner-company before this Court. While preferring the present writ petition, the petitioner-company has prayed for the following relief:

(i) To allow the petition by issuance of an appropriate writ order or direction for the stay of the operation of the impugned order dated 23-12-2009, passed by the learned respondent Approval Committee.

(ii) To issue a writ of mandamus or other writ, order or direction in the nature of mandamus, directing the learned Approval Committee to restore the LoA to the petitioner.

(iii) To grant costs of this writ petition to the petitioner,

(iv) To pass such other order or orders as may be deemed fit and proper in the interests and justice.

3. Learned Counsel arguing the matter on behalf of the petitioner-company has argued before this Court that the Appellate Authority, during the pendency of the present writ petition, has decided the appeal and the matter has been remanded back to the Approval Committee for fresh adjudication.

4. Learned Assistant Solicitor General appearing on behalf of the respondent Approval Committee has argued before this Court that the present petition has become infructuous as a final order has already been passed by the Appellate Authority in respect of the appeal preferred u/s 16(4) of the Special Economic Zones Act, 2005. He has vehemently argued before this Court that keeping in view the prayer clause, as the matter has been remanded back to the Approval Committee for de novo consideration and it has also been directed that the Unit Approval Committee, after due deliberations and after having provided adequate opportunity to the appellant to present their cases, shall pass a speaking order backed up by proper legal documentation, and therefore, the question of issuing any direction/order to the Unit Approval Committee in the peculiar facts and circumstances does not arise.

5. Heard learned Counsel for the parties at length and perused the record.

6. In the present case, the petitioner-company before this Court has filed the

present petition for stay of the operation of the order dated 23-12-2009 passed by the Approval Committee, Indore Special Economic Zone. A show cause notice was issued on 30-11-2009 u/s 16(1) of the Special Economic Zones Act, 2005, alleging evasion of Central Sales Tax, Value Added Tax as well as Customs Special Additional Duty and the petitioner-company being aggrieved by the aforesaid show cause notice, came up before this Court by filing a writ petition and the same was registered as Writ Petition No. 9108/2009. This Court has disposed of the aforesaid writ petition on 9-12-2009 with a direction to the Approval Committee to pass an order after granting an opportunity of hearing to the petitioner-company. The following order was passed by this Court:

(i) Although a copy of this order, the reply if any may be filed by the petitioner within 10 days before the competent authority, on filing such reply the competent authority, shall take a decision within 2 weeks thereafter.

(ii) In the meantime, decision taken by the Approval Committee in its meeting on 25-11-2009 regarding ceasing the effect of LoA shall not be given effect.

(iii) If the petitioner is aggrieved by the final order, he may take recourse of law afresh.

7. The Approval Committee, in compliance to the order passed by this Court on 9-12-2009, has finally passed an order on 23-12-2009 and an appeal was preferred by the petitioner-company u/s 16(4) of the Special Economic Zones Act, 2005 and the petitioner-company, as there is no provision under the Act for grant of stay, came up before this Court by filing the present writ petition. During the pendency of the present writ petition, the appeal preferred by the petitioner-company has been decided and the matter has been remanded back to the Unit Approval Committee to consider its action de novo. The following order has been passed by the Appellate Authority:

Item No. 40.26 : Appeals before BoA

(i) Appeal of M/s. New Tech Abrasives Limited, a unit in the ISEZ, against the order dated 23-12-2009 of the Approval Committee, ISEZ, cancelling the LoP of the unit

(ii) Appeal by M/s. New Tech Pipes Limited, a unit in the ISEZ, against the order dated 23-12-2009 of the Approval Committee, ISEZ, cancelling the LoP of the unit.

The Board noted that both the Appeals pertained to the same firm wherein the Appeal is against the cancellation of LOP of the units. The firm challenged the action of the SEZ in the High Court which directed that BOA should decide the Appeals.

DC ISEZ said that in the Unit Approval Committee meeting held on 23rd of December 2009 and it was decided by the UAC to cancel the LOA essentially on account of the firm evading excise/customs duty, non-payment of VAT/CST/Entry

Tax, and for theft of electricity.''

The representative of the units pointed out that the LOA for both the units were cancelled only on the basis of mere allegations and without any documentary evidence. None of the allegations are correct. The Board of Approvals, after due deliberations and in compliance of the Hon''ble High Court of Madhya Pradesh''s Bench at Indore Order No. 2747/10/2010 and 2728/10/2010 remanded the cases and appeals back to the Unit Approval Committee to consider its action de novo. The Board further directed that the Unit Approval Committee, after due deliberations and after having provided adequate opportunity for the appellants to present their cases, will pass a considered Speaking Order which should be backed up by. proper legal documentation. Any further follow up action, in this regard, therefore lay on the part of the Unit Approval Committee and the Development Commissioner of ISEZ.

The aforesaid order makes it very clear that the appeal of the petitioner-company has been decided and the Approval Committee has been directed to pass a fresh order, after granting adequate opportunity to the petitioner-company in the matter. Not only this, the order further reveals that the Unit Approval Committee has been directed to pass a speaking order duly backed up by proper legal documentation.

8. This Court is of the considered opinion that once the matter has been decided by the Appellate Authority and the Approval Committee has been directed to decide the matter afresh, question of staying the operation of the order dated 23-12-2009, in the peculiar facts and circumstances of the case, does not arise. Not only this, the order of the Appellate Authority further reveals that any further follow up action lies on the part of the Unit Approval Committee and the Development Commissioner of the Special Economic Zone, and therefore, in case the petitioner-company is further aggrieved in the matter, is certainly having a remedy to approach by filing a proper application before the Unit Approval Committee/before the Development Commission of Special Economic Zone. So far as this petition is concerned, keeping in view the relief clause of the writ petition, no relief can be granted to the petitioner in respect of stay of the impugned order dated 23-12-2009 passed by the Approval Committee, as the same is not in existence, at present.

9. With the aforesaid observations, the present writ petitions are disposed of. No order as to costs.

C. c. as per rules.

