

(2006) 02 DEL CK 0141
In the Delhi High Court
Case No : Writ Petition (C) 1758 of 2006

Oriental Manufacturing Co.

APPELLANT

Vs

The Special Director, Enforcement Directorate

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Citation : (2006) 127 DLT 573 : (2006) 87 DRJ 581

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Sanjay Mani, for the Appellant; Rajdeepa Behura, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—Till date more than twenty Writ Petitions have been filed against Orders passed by Shri O.P.Nahar, Chairperson, Appellate Tribunal for Foreign Exchange. In several Orders of this Court it had been pointed out that the Tribunal must address and answer two questions. Firstly, the existence or absence of a prima facie case. Secondly, undue financial hardship if penalty is not to be exempted. As far back as in November, 2005 I had requested the Additional Solicitor General to look into the matter as valuable Court time is being taken up because of passing of Orders which do not comply with the directions given by the Hon'ble Supreme Court. Time and again it has to be pointed out that compliance in Mehsana Dist. Co-op. Milk P.U. Ltd. Vs. Union of India (UOI), has to be made. Petitions have been disposed of in the past by remanding them for fresh consideration so that the reasons which have prevailed on the Tribunal to refuse or grant exemption are clearly spelt out. In a number of cases it has been noted that even though the Tribunal is of the view that no prima facie case or undue hardship is made out, exemption from pre-deposit of penalty is granted as if the Tribunal has the power to distribute munificence and largesse. If circumstances do not justify the waiver of pre-deposit, granting it amounts to violation of the statute itself.

2. In the present case the total amount of export proceeds has been repatriated on 20th July, 1997. The Petitioner contends that the delay had been caused because of clarification from the Reserve Bank of India and the Central Bank of India. Inexplicably, dispensation has been granted to the three partners but the appellant firm has been directed to make pre-deposit of the full amount of penalty within thirty days from that date. Only one of these positions can be adopted. If the three partners were entitled to exemption, there is nothing available in the Order which would show why the firm would be liable to make a complete pre-deposit. The opposite is also axiomatic in that if Appellant firm is liable to make complete deposit, the three partners ought not to have been exempted. Learned counsel for the Petitioner points out that interest has been paid to the Reserve Bank of India in respect of the delay.

3. The impugned Order reads as follows:

APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE

JANPATH BHAWAN, 4TH FLOOR, B WING JANPATH, NEW DELHI-110001.

ZONE-DELHI

Date - 10th January, 2006.

Appeal Nos. - 251 to 254/2000

Appellants. - M/s. Oriental Manufacturing Co. and Ors.

Shri Kamlesh V Patel, Appellant in Appeal No.252/2000 and a partner of the appellant firm, appeared in person. He has filed copy of the letter dated 27.3.2000 of Central Bank of India where it is stated that total amount of export proceeds is repatriated on 20.7.1997. This date is beyond the period of six months from the date of export. Looking towards this situation, we allow dispensation in favor of the three partners but direct the appellant-firm to make pre-deposit to the full amount of penalty within 30 days from today failing which the appeal will be dismissed on this ground alone. The above decision is considered appropriate in the particular circumstances because repatriation after the prescribed period at best can be considered for reduction of the penalty.

Sd/-

O.P. Nahar

Chairperson.

4. The contention of learned counsel for the Petitioner is that since remittances have been received and interest has been paid thereon only a technical violation had occurred. Furthermore, Section 18(2)(B) would be attracted provided the Authority comes to the conclusion that the delay is to an extent which is unreasonable having regard to the ordinary course or trade. Even if the Petitioner had failed to appear before the Adjudicating Office this conclusion ought to have been specifically stated.

5. Since the Appellate Tribunal has allowed total dispensation of pre-deposit of the penalty in respect of three partners, similar total exemption ought to have been granted to the Appellant firm also.

6. In these circumstances, the writ petition is allowed. The impugned Order is set aside and the Petitioner is directed to appear before the Appellate Tribunal for Foreign Exchange on 7th March, 2006. The Appellate Tribunal shall thereafter decide the application at its own convenience.