(2018) 06 CAL CK 0043

In the Calcutta High Court

Case No : Writ PetitionNo. 24260 (W) of 2016

Phoenix Overseas Ltd. & Anr. APPELLANT

Vs

Union Of India & Ors. RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 mdash; Section 5??1992 — Section 5

Citation : (2018) 06 CAL CK 0043

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Arijit Chakraborty, Nilotpal Chowdhury, Debjani Roy, Kasturi Tarafdar

Final Decision : Disposed Of

Judgement

DEBANGSU BASAK, J.

Affidavits filed in Court be taken on record. The petitioner seeks a direction upon the respondent authorities to consider an application dated January

12, 2015 made for disbursement of incentives under the provisions of Incremental Export Incentivization Scheme (IEIS) in particular reference to

paragraph 3.14.5 of the Foreign Trade Policy, 2009-2014 in respect of exports made by the first petitioner during the financial year 2013- 2014.

Learned advocate for the petitioner draws the attention of the Court to the notification no. 3 dated April 14, 2013, which introduced amendments in

Chapter 3 of the Foreign Trade Policy, 2009-2014. He also draws the attention of the Court to notification no. 43 dated September 25, 2013 issued in

exercise of powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 2.1 of the Foreign

Trade Policy, 20092014. He submits that, the notification dated September 25, 2013 cannot be read to have introduced a cap of Rs.1 Crore as sought

to be interpreted by the department while considering any application for grant of disbursement of incentive under the subject scheme.

He relies upon a decision of the Bombay High Court reported at (2016) 334 ELT 222 (JSW Steel Limited & Anr. Vs. Union of India & Ors.) and

submits that, a similar issue was decided by the Bombay High Court in favour of the petitioner. He next refers to a decision dated April 12, 2018

rendered by the High Court of Delhi in W.P. (Civil) No. 5082 of 2017 (M/s. Welldone Exim Pvt. Ltd. Vs. Directorate General of Foreign Trade &

Anr.) and submits that, the decision of JSW Steel Limited (supra) was followed by the Delhi High Court and that, the regional authority was directed

to examine the claim of the petitioner. The notification dated September 25, 2013 was interpreted to mean that, no ceiling was introduced by the same.

Learned advocate appearing for the respondents submits that, the notification dated September 25, 2013 introduces a limit of Rs.1 crore prospectively

with effect from the date of such notification. The government is entitled to add, alter, modify and even rescind an incentive scheme prospectively. In

support of such contention, she relies upon (2016) 2 SCC 226 (Director General of Foreign Trade & Anr. Vs. Kanak Exports & Anr.). She submits

that, JSW Steel Limited (supra) relates to a quarterly scheme and that, the provisions of the quarterly scheme and the annual scheme being different,

the ratio laid down in JSW Steel Limited (supra) are not attracted. So far as M/s. Welldone Exim Pvt. Ltd. (supra) is concerned, she submits that, the

notification was not considered in the light of the submissions presently made. Consequently she submits that, the petitioner is not entitled to the reliefs

as prayed for.

The first petitioner is an exporter. It seeks grant of incentives under the IEIS. Apparently, the authorities are not considering such grant of incentives

made by the petitioner through its application dated January 12, 2015 on the ground that, the claim made by the petitioner exceeds Rs.1 Crore.

According to the respondents, there is a ceiling of a claim of Rs.1 Crore introduced by the notification dated September 25, 2013 and, therefore, the

petitioner is not entitled to such claim. The relevant notification dated September 25, 2013 is as follows:

â??S.O. (E) In exercise of the powers conferred by Section 5 of the Foreign Trade

(Development and Regulation) Act, 1992 read with Para 2.1 of

the Foreign Trade Policy, 2009-2014, the Central Government hereby makes the following amendments in the Foreign Trade Policy (FTP) 200914

with immediate effect: The following categories are added after serial no

(x) in the list appended in paragraph 3.14.3 of Foreign Trade Policy bearing the Heading â??Ineligible Exports Categories/Sectors for FMSâ??:

(xi) Export of Cotton.

(xii) Export of Cotton Yarn.

(xiii) Exports which are subject to Minimum Export Price of Export Duty. The following sub-paragraphs are added below paragraph 3.14.5 (c) as

under:

â??(i) Benefit of Incremental Export Incentivization Scheme for the year 2013-14 will be limited to a scrip of a value not exceeding Rs.1 Crore per

IEC.

(ii) Claims in excess of the value will be subjected to greater scrutiny by Regional Authrotiy. The following ineligible categories are added after Sl. No.

(xvi) in the eligibility criteria specified in Paragraph 3.14.5(d) of FTP:

(xvii) Cotton.

(xviii) Cotton Yard.

(xix) Exports which are subject to Minimum Export Price or Export Duty.

Effect of this Notification: Category of ineligible exports has been expanded for certain benefits under chapter 3 of FTP as given at para 2 and 4

above. Para 3 restricts the entitlement for claiming IEIS benefit.â??

The notification dated September 25, 2013 was considered in JSW Steel Limited (supra). After considering the rival contentions with regard to such

notification including the contention of introduction of a cap on the amount of claim, it is of the view that, the notification dated September 25, 2013

introduces certain checks and measures, which are essential and that, prescription of a greater scrutiny for high value claim is wise. It does not find

anything objectionable about such a course of action being taken. It goes on to negate the claim that, the notification introduces a cap on the amount of

the claim. This view is followed by the Delhi High Court in M/s. Welldone Exim Pvt. Ltd. (supra).

Kanak Exports (supra) is of the view that, an incentive scheme promulgated by the government is in the nature of concession or incentive, which is

the privilege of the government. Such exemptions, concessions or incentives can be withdrawn at any time. When such withdrawal is shown to be in

public interest, the Court would not enter into such policy matter. It recognizes the right of the government to amend, modify or even rescind a

particular scheme.

In the present case, the notification dated September 25, 2013 introduces paragraph 3.14.5(C) to the Foreign Trade Policy, 2009- 2014 in exercise of

powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992. On a plain reading of the paragraph sought to be

introduced into the Foreign Trade Policy, 2009-2014 it appears that, the authorities were presenting two yard sticks for the purpose of considering

claims for disbursement of benefits under the IEIS for the year 2013-2014. Claim less than Rs.1 Crore are would be subjected to lesser scrutiny than

claims in excess of Rs.1 Crore. Claims in excess of Rs.1 Crore would be subjected to greater scrutiny by the regional authority. This prescription of

levels of scrutiny for two specified amounts of claims cannot, in my view, be read to mean that, the Central Government had introduced a cap on the

claim of the exporter. The notification does not say so. Words need not be read into the notification when the words used are capable of conveying an

unambiguous meaning.

In such circumstances, on the strength of JSW Steel Limited (supra), M/s Welldone Exim Pvt. Ltd. (supra) and also for the reasons contained herein,

the authorities are directed to consider and dispose of the application made by the petitioner dated January 12, 2015, in accordance with law. The

authorities will not reject such application, on the ground that the claim made in such application is in excess of Rs.1 Crore. It is expected that, the

authorities will dispose of the application dated January 12, 2015 within four weeks from the date of communication of this order to them. The

authorities will communicate their decision to the petitioners forthwith after taking the same. W.P. No. 24260 (W) of 2016 is disposed of. No order as

to costs. Urgent certified website copies of this judgment, if applied for, be made available to the parties upon compliance of the requisite formalities.

