(2006) 12 DEL CK 0086

In the Delhi High Court

Case No : Writ Petition (C) No''s. 18488-18489 of 2006 and C.M. No. 15408 of 2006

Regency Trading Corporation APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:
Constitution of India, 1950 — Article 226
Foreign Trade (Development and Regulation) Act, 1992 — Section 11(2), 14, 15

Citation : (2006) 12 DEL CK 0086

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Priyadarshi Manish and Anjali Manish, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners have impugned the dismissal of his appeal by order dated 11th March, 2005 whereby their appeal against the order dated, 31st July, 2003 of Joint Director General of Foreign Trade imposing a fiscal penalty of Rs. 35.00 lakh was dismissed.

2. The petitioners were granted advance license No. P/K/1522472 dated 14th May, 1993 for import of 100 metric tonnes of brass scrap for a CIF value of Rs. 35.00 lakh (US 1,12,000) with a condition that they would export 92.500 metric tonnes of brass art wares for a FOB value of Rs. 70.00 lakh (US 224000) within a period of 12 months from the date of issuance of the license. The license was actual user license and not transferable.

3. The petitioner failed to meet the export obligation within 12 months and could not fulfill the export obligation even during extended E.O. period which had expired on 15th February, 1996 entailing a show cause notice dated 1st October, 1996. The petitioner was also asked to submit all necessary documents evidencing fulfillment of export obligation, in case the petitioner had fulfilled the

export obligation.

4. The petitioner did not submit requisite documents, though some documents were filed and was declared as a defaulter vide order dated 13th August, 1997 and was directed to pay a custom duty on the imports made by the petitioner along with interest at the rate of 24% per annum. The petitioners further failed to pay required custom duty with interest and consequently a show cause notice dated 28th December, 1998 u/s 14 of Foreign Trade (Development Regulation) Act, 1992 for taking action u/s 11(2) of the Act was given along with the date for personal hearing.

5. The petitioners submitted a letter dated 7th January, 1999 contending that they have completed 100% obligation value wise and requested further time of six months to complete remaining export obligation. By a letter dated 11th March, 1999, the petitioners were again asked to submit the requisite documents coupled with necessary TR/Bank guarantee required in terms of public notice No. 7/98 dated 24th April, 1998.

6. The petitioners, according to the Adjudicating Officer, Joint Director General of Foreign Trade, did not submit the requisite information and documents resulting into another show cause notice dated 2nd August, 2001 asking for documents for fulfillment of export obligation and the petitioners were also asked to have a personal hearing on 29th August, 2001. For the personal hearing, an adjournment was prayed on account of the sickness of the petitioners'' partner and so the personal hearing was adjourned to 13th February, 2002. In the mean-lime the petitioners again sent the statement and export accounts against license No. P/K/154472.

7. The learned Counsel for petitioners contended that statement of export against License No. P/K/154472 was given by communication dated 9th February, 2002 which will reflect that there has been 100% export value wise.

8. The learned Counsel for petitioners, however, admitted that according to the terms of the advance license, petitioners had to export 92.500 metric tonnes of brass art wares and only 50% of the export obligation weight wise was met. The learned Counsel for the petitioners is unable to show the documents which would reflected that 50% of the export obligation by weight was met. The learned Counsel for the petitioners is also unable to show from the grounds of appeal that a ground was taken about fulfillment of the export obligation to the extent of 50% by weight and thus entitling him for some relief and the documents filed in support of claim of fulfilling the export obligation by weight. Since the petitioner fulfilled the export obligation by value there will be fulfillment of export obligation by weight to some extend but fulfillment of export obligation by value alone will not absolve petitioner of his liability.

9. The Adjudicating Officer on failure of petitioners to appear for personal hearing on 6th June, 2002 and for not submitting the documents in support of fulfillment of complete export obligation by weight, imposed a penalty of Rs. 35.00 lakh in

exercise of power u/s 11(2) of Foreign Trade (Development Regulation) Act, 1992.

10. The Appellate Tribunal also relied on the fact that the petitioners failed to submit the required documents in support of fulfillment of export obligation by weight and he could not show the documents which would have shown fulfillment of export obligation by weight also.

11. Learned Counsel for petitioners has also raised a ground that the application for pre-dispensation of the penalty amount was not decided and a restoration application was filed by the petitioners for recalling the order dated 11th March, 2005 which is termed by the petitioners as an ex parte order.

12. By communication dated 29th June, 2005, the petitioners were communicated that the appeal has been disposed of by order dated 11th March, 2005 and consequently, it is not feasible to grant personal hearing to the petitioners after the decision of the appeal. The learned Counsel for the petitioners is also unable to show any valid reason as to why the petitioners failed to avail the opportunities on 10th December, 2004 and 10th February, 2005 as no one had appeared on behalf of petitioner company.

13. The appellate board had refused to grant further opportunity as the license was issued on 14th May, 1993 and had considered all the relevant documents and have dismissed the appeal u/s 15 of the Foreign Trade (Development and Regulation) Act, 1992. The learned Counsel for the petitioners repeatedly emphasized on the fulfillment of the export obligation by value. The petitioners are, however, unable to fulfill export obligation of 92.500 metric tonnes by weight nor any documents have been produced even in the writ petition to show that the export obligation was fulfilled by weight. If the export obligation has not been fulfilled by weight which was 92.500 metric tonnes, merely because the export obligation was fulfilled value wise, will not entitle for any relief in the facts and circumstances.

14. The appeal has not been dismissed on account of not depositing the penalty amount and in the circumstances no specific order for dispensation of pre-deposit of penalty amount will not make the order dated 11th March, 2005 dismissing the appeal, illegal or invalid. The order dismissing the appeal was passed on 11th March, 2005 and no rational Explanation has been given for filing the writ petition almost after twenty months.

15. There is no infirmity or illegality in the orders dated 31st July, 2003 of Joint Director of Foreign Trade and in 11th March, 2005 of Director General of Foreign Trade. The learned Counsel for the petitioners is unable to show such procedural unreasonableness which will entail interference by this Court under Article 226 of the Constitution of India.

16. The writ petition is without any merit and it is liable to be dismissed and, Therefore, it is dismissed.