(2007) 03 P&H CK 0085

In the Punjab And Haryana At Chandigarh

RMI Cycles Limited APPELLANT

Vs

The Additional Director General of Foreign Trade and Another RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Foreign Trade (Development and Regulation) Act, 1992 — Section 13, 15
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15

Citation : (2007) 146 PLR 604 : (2007) 3 RCR(Civil) 497

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The prayer made in this petition, filed under Article 226 of the Constitution of India, is for quashing of order dated 28.11.2006 (Annexure P.9) passed by the Additional Director General of Foreign Grade (respondent No. 1) under proviso to Section 15 read with Section 13 of the Foreign Trade (Development and Regulation) Act, 1992. A further prayer has also been made to issue direction to the respondents to adjudicate upon the appeal filed by the petitioner against the order dated 26.8.2004 passed by the Joint Director General of Foreign Trade, Ludhiana (respondent No. 2) after affording the petitioner full opportunity of hearing.

2. The Additional Director General of Foreign Trade had dismissed the appeal primarily on the ground that the appeal was time barred and that the petitioner had failed to make payment of pre-deposit. However, Mr. Sanjay Bansal, learned senior No. 1 for the petitioner has argued that the order passed on 26.8.2004 was communicated to the petitioner on 30.8.2004. The appeal against the afore-mentioned order could have been filed before Additional Director General of Foreign Trade within a period of 45 days and accordingly the appeal, which was filed on 11.10.2004, was apparently within the period of 45 days and, therefore, the impugned order is liable to be set aside. He has further submitted that the other basis for dismissing the appeal is that the petitioner had not disclosed before the Board for Industrial and Financial Reconstruction (for short the

''BIFR'') about its liability towards the Director General of Foreign Trade (for short, ''DGFT'') for duty free import of machine and fulfilling the obligations attached therewith. In that regard, our attention has been drawn by the learned Counsel for the petitioner to the documents submitted to the BIFR for reference u/s 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985. learned Counsel has pointed out to the contingently liability of the company and an item ''(d)'', the liability towards DGFT has been recorded. Therefore, it has been submitted that the order is factually incorrect and is liable to be set aside. Moreover, we find that the petitioner-Company is under a lockout with effect from 8.7.2001 which has resulted in non-production of bicycle for exports.

3. Mr. Sanjeev Kaushik, learned Counsel for the respondents could not successfully rebut the factual statements borne out from the record and the arguments raised by the No. 1 for the petitioner.

4. After hearing learned Counsel, we find merit in the argument raised in support of the petition, the appeal is well within limitation as it was filed within 45 days. Moreover it is a case where the waiver of pre-deposit should have been granted to the petitioner. Keeping in view the fact that the manufacturing unit of the petitioner was lying closed since July 8, 2001.

5. Accordingly, we quash order Annexure P.9 and direct respondent No. 1 to entertain the appeal by considering the same to be within limitation and waive of the condition of pre-deposit. The appeal be decided on merits within a period of three months from the date of receipt of copy of this order.

6. The writ petition is disposed of in the manner indicated above.

