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(2016) 05 DEL CK 0200

In the Delhi High Court

Case No : Writ Petition (C) No. 4706 of 2016 and C.M. No. 19636 of 2016 (Stay)

R.S. Windlass & Sons APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Citation : (2016) 338 ELT 34

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : S/Shri Jitendra Singh, Anshumaan Sahni, Apurv Chandola and Ritwik Kumar, Advocates, for the Petitioner; S/Shri Anil Panwar, Advocate and Satish Kumar, Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. The challenge in this writ petition is to a show cause notice (SCN) dated 18th March, 2016 issued to the Petitioner by the Joint Commissioner Special Investigation & Intelligence Branch (Export) in the Office of the Commissioner of Customs ICD, Export, Commissionerate, TKD, New Delhi.

2. The facts in brief are that the Petitioner is a partnership firm carrying on the work of garment manufacture export at its manufacturing unit located in C-21, Hosiery Complex, Phase-II, NOIDA, Uttar Pradesh. The Petitioner is stated to have submitted an application to the office of Development Commissioner, NOIDA Special Economic Zone (''NSEZ'') on 8th September, 2006 for setting up a 100% Export Oriented Unit (''100% EOU'') and this application is stated to have been allowed by the NSEZ on 7th December, 2006. It is stated that after a letter of permission (LOP) was issued by the NSEZ, an agreement was entered into between the Petitioner and the NSEZ on 9th December, 2006 for conversion of the Petitioner from a DTA unit to a 100% EOU. Thereafter an application was made by the Petitioner on 18th September, 2009 for grant of a licence for Private Customs Bonded Warehouse under Section 58 of the Customs Act, 1962 (''CA''). This licence was issued on 13th May, 2010.

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3. It is stated that a search was conducted in the premises of the Petitioner at NOIDA by the Directorate of Revenue Intelligence (''DRI'') on 13th February, 2014 and certain documents were seized. It is claimed that the Managing Partner of the Petitioner was compelled to deposit Rs. 30 lakhs with the Customs Department i.e. Rs. 20 lakhs on 13th February, 2014 and Rs. 5 lakhs each on 19th February, 2014 and 21st February, 2014.

4. Nearly two years after the search proceedings, the impugned SCN dated 18th March, 2016 was issued to the Petitioner and its partners (co-noticees) seeking to recover a sum of Rs. 18,24,138 as the amount of Duty Drawback refunded to the Petitioner in 2007-08 and 2008-09 on the basis that a 100% EOU cannot claim any duty drawback.

5. As far as the present petition is concerned, what is relevant is that on 22nd April, 2016 a letter was written by counsel for the Petitioner to the Adjudicating Authority i.e. Additional/Joint Commissioner of Customs (Exports) requesting for some time to answer the allegations imputed against the Petitioner and its Partners. A prayer was made for grant of inspection of the investigation file and the non-relied upon documents (Non-RUDs).

6. By a letter dated 9th May, 2016, the Adjudicating Authority informed the Petitioner and the co-noticees that the request for inspection of the investigation file and the non-RUDs has been rejected and that the personal hearing in the matter has been fixed at 12.30 p.m. on 20th May, 2016. It is in those circumstances that the present petition was filed.

7. By an order dated 20th May, 2016 while directing notice to issue to the Respondent, the Court required Mr. Satish Kumar, learned Senior Standing Counsel for the Respondent, to seek instructions on providing inspection to the Petitioner of the investigation file and the non-RUDs. The further proceedings pursuant to the impugned SCN were stayed.

8. Today Mr. Satish Kumar states that he has instructions to file a counter affidavit. He sought more time for that purpose. He also referred to Para 24 of the SCN which reads as under :

"NON RUDs may be collected, if required, by the notice/notices from the office of the Director General, Directorate of Revenue Intelligence, 7th Floor, ''D'' Block, Indraprastha Bhavan, I.P. Estate, New Delhi during office hours on any working day with prior appointment."

9. The Court is of the view that granting time to file counter affidavit will result in the adjudication proceedings being delayed further. The Court, at this stage, does not wish to entertain the prayer of the Petitioner to quash the SCN. The Court is of the view that the SCN will have to be adjudicated on merits. It will be open to the Petitioner to raise all possible defences in the adjudication proceedings.

10. The Court, however, is concerned that a fair procedure should be followed by the Adjudicating Authority. Having permitted the Petitioner in Para 24 of the SCN

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to collect the non-RUDs from the office of the DRI, after issuing notice "on any working day with prior appointment", it is surprising that by the impugned letter dated 9th May, 2016, the Adjudicating Authority informed the Petitioner that its request for inspecting the non-RUDs is rejected. Clearly there has been a change of mind by the Adjudicating Authority on this aspect. The fact that no reasons have been given in the said letter dated 9th May, 2016 for such rejection makes it even more suspect.

11. As far as the other request for inspection of the investigation file is concerned, Mr. Satish Kumar points out that there could be documents in the investigation file which cannot be shown to the Petitioner and other co-noticees on account of their nature. The Court is of the view that this by itself cannot be a reason to refuse inspection of the investigation file. If there are documents in the investigation file which, according to the Adjudicating Authority, cannot be shown to the Petitioner, the Adjudicating Authority should give reasons in writing for refusing inspection of such documents.

12. In the circumstances, the Court is of the view that the rejection of the Petitioner''s request by the impugned letter dated 9th May, 2016 by the Adjudicating Authority is untenable in law and is, accordingly, set aside.

13. The following directions are, accordingly, issued :

(i) Within a period of two weeks from today the Adjudicating Authority will ensure that the DRI returns to the Petitioner the non-RUDs in terms of Para 24 of the SCN.

(ii) Within the same period the Adjudicating Authority will provide the Petitioner inspection of the Investigation File and wherever any portion of the file cannot be shown to the Petitioner and/or co-noticees, the Adjudicating Authority will record the reasons in writing for such refusal, and provide a copy of the reasons to the Petitioner forthwith.

(iii) Within four weeks of being granted inspection of the investigating file, the Petitioner and other co-noticees will file their respective replies to the SCN and not seek any further time for that purpose.

(iv) The Adjudicating Authority will endeavour to complete the adjudicating proceedings within a period of six months thereafter.

14. The writ Petition and application are disposed of in the above terms.

15. Dasti.

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