
(2002) 01 DEL CK 0137

In the Delhi High Court

Case No : LPA No. 599 and CM 1461 of 2001

Saketh India Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 20(2)
Imports and Exports (Control) Act, 1947 — Section 4

Citation : (2002) 2 AD 464 : (2002) 97 DLT 391 : (2002) 82 ECC 257 : (2002) 143 ELT 274

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : L.P.Dhir and Alok Dhir, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The appellant herein has filed this appeal against the impugned order dated 21st September, 2001 whereby the learned Single Judge has dismissed the writ petition filed by the appellant. By the aforesaid writ petition, the appellant had challenged the order dated 3rd August, 1999 of the Appellate Committee, Ministry of Commerce passed in an appeal against an order dated 6th April, 1998 passed by the Additional Director General of Foreign Trade(for short`Addl.DGFT"). It would be appropriate to scan through the relevant facts, in the first instance, which led to passing of the aforesaid orders.

2. The appellant has a marble processing unit at Makrana and three independent 100 per cent export oriented units, processing and exporting cut and polished granite tiles and slabs at Bangalore, Hosur and Nalgonda. In respect of its Nalgonda unit at Andhra Pradesh a show cause notice dated 25th March, 1996 was issued by the Addl.DGFT based on the report of the Development Commissioner, ZEP, Visakhapatnam that this unit made exports to the extent of Rs.73.02 lacs only as against an export obligation of Rs.30.42 crores. Ultimately,

it resulted in an ex-parte adjudication order dated 6th April, 1998 imposing fiscal penalty of Rs.50 lacs on the appellant. The appellant filed appeal on 12th May, 1998 against the aforesaid order before the Appellate Committee. On a miscellaneous application filed in this appeal for stay of the impugned order of the Addl.DGFT, the Appellate Committee directed the appellant to furnish a Bank Guarantee of Rs.2,50,000/- which was furnished on 3rd August, 1998. Thereafter, the appeal was heard and impugned order dated 3rd August, 1999 was passed dismissing the appeal. It is this order which was challenged by the appellant herein in the aforesaid writ petition.

3. The order of the Appellate Committee was assailed on two grounds, which were the grounds pressed before us in this appeal as well. The twin contentions were:

(i) The order of the Addl.DGFT was passed in violation of the principles of natural justice as the appellant was not given proper hearing or opportunity to defend the show cause notice.

(ii) The impugned order passed by the Appellate Committee was bad in law as it was a non-speaking order and did not give any reasons while rejecting the appeal.

4. Both these grounds did not find favor with the learned Single Judge. Rejecting the contention of the appellant herein to the effect that the original order of the Addl.DGFT was in violation of principles of natural justice, the learned Single Judge noted that a finding of fact had been recorded by him that the appellant herein had not chosen to appear inspire of being served. The learned Single Judge further observed that a bare perusal of the order shows that repeated efforts were made to serve the appellant who was in fact served and it was not necessary to give notice for each date of hearing. It was further found that the appellant was aware of the proceedings which fact was not even disputed by the counsel for the appellant herein. The learned Single Judge also found that the plea taken by the appellant in para 3 of the writ petition was in contradiction to the plea taken by the counsel for the appellant in his letter dated 1st December, 1997 regarding non-appearance on particular dates.

] 5. In so far as second contention of the appellant is concerned, the learned Single Judge held that when the Appellate Committee was affirming the original order, in an order of affirmation reasons were not required to be given and accordingly the impugned order was sustainable. While holding so, reliance was placed on the judgment of the Supreme Court in the case of Chittaranjan Das Vs. State of West Bengal, .

6. As mentioned above, learned counsel for the appellant emphasised both the grounds and strenuously argued that the learned Single Judge fell in error in not correctly appreciating the aforesaid submissions.

7. It may be mentioned here that admittedly the appellant herein did not

respond to the show cause notice dated 25th March, 1996. Thereafter, the appellant was called for personal hearing on 6th December, 1996 as well as on subsequent dates, namely, 4th July, 1st September, 10th November, 22nd December, 1997 and 19th January, 1998. According to the Addl.DGFT nobody appeared on behalf of the appellant inspire of various dates fixed for personal appearance of the appellant and in these circumstances, the Addl.DGFT proceeded with the matter ex-parte and passed the impugned order. The relevant portion of the discussion in the impugned order reads as under:

"No reply was received from the notice firm in response to the show cause notice and the show cause notice addressed to their Bombay office at `84, Vallabhbbhai Road, Vile Parle(West), Bombay-400056" was received back with the post remark `left". Therefore copies of the show cause notice were sent to the O/o Jt.DGFT, Hyderabad, Bangalore/Bombay for personal delivery. O/o Jt.DGFT, Bangalore, could personally deliver the show cause notice to the firm at their address, 209, Raheja Chambers, 12-Museum Road, Bangalore, and took receipt of the same. Since there was no reply to the show cause notice, I decided to call the party for personal hearing on 6.12.96. The letter dated 3.10.96, to this effect was issued to the notice firm at their Bangalore and Bombay address. Again the letter addressed to their Bombay address was received back undelivered from the postal authorities. As no one from the notice firm's side appeared before me on the date of personal hearing, I decided to give one more opportunity of P.H. for 4.7.97. Letter informing the next date of P.H. was sent to the party on 5.5.97 but again no one appeared on the appointed time and date Therefore I decided to give one more chance to them to explain their case in person before me on 1.9.97. The letter conveying the date of P.H. for 1.9.97 was issued to the notice firm at their Bangalore and Bombay address on 7.7.97 by registered post but this time also no one appeared before. I am of the view that that notice firm is not interested in representing their case before me. I Therefore have no option except to decide the case on merits on the basis of documents available on record.

I find that in this case the show cause notice of even number dated 25.3.96 sent to the notice firm by Registered AD post has not been replied to and the opportunity of personal hearing allowed to them to present their case on 6.12.96, 4.7.97, 1.9.97, 10.11.97, 22.12.97 and 19.1.98 have also not been availed of by the party."

8. Since there was dispute about the actual happenings on the aforesaid dates, by order dated 5th November, 2001 passed in this appeal, the respondents were directed to produce the relevant record and the matter was adjourned to 11th December, 001. On 11th December, 2001 the matter was argued at length and the learned counsel for the respondents produced the record as well. We have gone through the record. The record shows the dispatch of notices for various dates as mentioned in the order of Addl.DGFT and the report thereon. This record further reveals that the appellant through its counsel had written letter

dated 1st December, 1997 addressed to Foreign Trade Development Officer informing that the appellant could not appear on 1st September, 1997 because of the reason that the mother of the counsel was undergoing surgical operation. This letter further states that the counsel had appeared on previous two dates i.e. 4th July and 1st September, 1997 but the matter could not be taken up on those dates as the Presiding Officer was busy/on leave. In these circumstances, request was made in its communication for fixing further date. This shows that the appellant was receiving the communications for appearance and was aware of the proceedings before the Addl.DGFT. Thereafter, the appellant was informed about the next date i.e. 22nd December, 1997 as is clear from application for adjournment moved by the appellant through counsel stating that the counsel for the appellant was going away to Patna on 22nd December, 1997 by train which leaves at 8PM, and Therefore, he would not be able to attend the hearing. The Addl.DGFT fixed yet another date i.e. 19th January, 1998 and notice dated 23th December, 1997 for this date was sent to the appellant. In this date it was clearly mentioned that in case the appellant failed to avail of the opportunity, the case would be decided ex-parte on the basis of documentary evidence available on record. However, the appellant did not appear on 19th January, 1998 also and in these circumstances, the Addl.DGFT passed the impugned order dated 6th April, 1998. The aforesaid facts would lead to irresistible conclusion that the appellant had the knowledge of the proceedings but neither any reply to show cause notice was given nor it chose to appear before the Addl.DGFT to make oral submissions. It may also be pointed out at this stage that in his communication dated 1st December, 1997 the counsel for the appellant had mentioned in para 3 thereof that the appellant was separately sending its detailed submissions/objections on the issue. However, even this was not done. Thus it is a clear case where a proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. For this appellant has to blame itself. The appellant cannot now turn around and blame the respondents by alleging that the Addl.DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case.

9. In so far as second contention is concerned, before appreciating this contention, it would be appropriate to refer to the appeal memo and the grounds of appeal on which the order passed by the Addl.DGFT was challenged before the Appellate Committee. A reading thereof would show that the main case put up by the appellant was that the order imposing the penalty of Rs.50 lacs was erroneous and without jurisdiction inasmuch as the appellant company was not guilty of contravening the provisions of Sections 4-I of the Imports and Exports(Control) Act, 1947 and Clause 8(i) of the Imports(Control) Order, 1955 read with Section 20(2) of The Foreign Trade (Development & Regulation) Act, 1992. It was the case of the appellant that it had not breached any of the conditions of the Letter of Permission by which it was required to fulfill its export obligations inasmuch as it became a sick company, and Therefore, it was beyond

its control to comply with the conditions stipulated in the Letter of Permission. The appellant has further pleaded that it was the victim of circumstances and it became impossible to fulfill the export obligation. Thus the appellant does not dispute that as against the obligation of Rs.30.42 crores the appellant had made the export of Rs.73.02 lacs only, and Therefore, could not meet the conditions stated in the said Letter of Permission. Therefore in the appeal, the only attempt of the appellant was to explain the circumstances under which it could not meet these export obligations.

10. However, what is important to be considered is that the alleged facts were stated by the appellant for the first time in the appeal and urged before the Appellate Committee. There was nothing on record stated by the appellant before the Addl.DGFT who passed the original order of imposing penalty. The Appellate Committee was supposed to consider the appeal with reference to the record. On the basis of record, once the Appellate Committee did not find any infirmity in the original impugned order and was upholding the said order on the basis of reasons given by the Addl.DGFT, it was not necessary for it to state the same reasons all over again. Although it would have been appropriate for the Appellate Committee to deal with the aforesaid contentions of the appellant herein and give some reasons for rejecting the same, however, keeping in view the fact that these contentions of the appellant are dealt with by us on merits as well, no purpose would be served in remanding the case back to the Appellate Committee for passing a speaking order.

11. In view of the foregoing discussion, we find no merit in this appeal. Appeal and CM stand dismissed.