(2010) 01 DEL CK 0363

In the Delhi High Court

Case No : Writ Petition (C) 1531 of 1996

Sawhney Export House APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 254 ELT 603

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; Ravinder Aggarwal, for the Respondent

Judgement

S. Muralidhar, J.—This is a writ petition seeking a direction to the Respondents to disburse the 45 per cent premium in lieu of the replenishment licences (REP) and to release the Cash Compensatory Support (CCS) against export documents received by them. The Petitioner also seeks compensation for non-release of the incentives in terms of the prevalent import-export policy consequent upon which the Petitioner alleges that he suffered in his export business.

2. The Petitioner Sawhney Export House is a partnership firm engaged in the business of ready-garments and handicrafts. Shri T.S. Sawhney who appears in person and argued this petition, is the Power of Attorney Holder of the Petitioner.

3. In terms of the Import Export Policy of 1988, the Chief Controller of Import & Export (CCI&E) announced a scheme giving CCS and REP licences to registered exporters against export performance. The Petitioner is stated to be a regular exporter registered with the Apparel Export Promotion Council (AEPC) and other Export Promotion Councils. The Petitioner submitted applications for grant of CCS, REP licences and traditional licences against the export of his ready-made garments, textile products and handicrafts.

4. The Petitioner has in para 8 of the petition listed out the applications submitted (along with the reference numbers and dates) for grant of REP licence

(also known as Exim scrips). According to the Petitioner, the total value of the exports against which it was seeking REP licences was Rs. 59,96,911/-. It is stated that when the exim scrips were introduced in July 1991, the premium was around 45 per cent. This was factored by the exporters in fixing their export prices. On 16th March 1992 the Reserve Bank of India (RBI) announced its decision to purchase exim scrips at a premium of 20 per cent. The lowering of the premium was largely on account of the fact that a large number of import items were placed in the open general licence list. The other problem faced by the exporters was that there was a considerable time gap in the licencing authorities issuing exim scrips/REP licences. The exporters were required to submit the applications to the licencing authorities by 31st May 1992. It was urged by the exporters that this period should be extended up to 31st October 1992.

5. According to the Petitioner against the application made by it for issuance of REP licences against the exports made between April-June 1990 January-March 1992, neither CCS was disbursed nor the REP licences issued. The Petitioner has quantified the total loss suffered by it at Rs. 96,60,122.50p., and has given a break-up of the calculation in para 8 (ix) of the petition. This includes the disbursement of premium at 45% on the REP licences, interest @ 24% on the said amount, the disbursement of CCS claims as well as interest thereon. It is stated that a writ petition was filed (W.P. No. 4741 of 1995) which was dismissed as withdrawn with permission to the Petitioner to challenge the orders passed by the Respondents rejecting the claim of the Petitioner.

6. Rule was issued in the present petition on 19th April 1996. This petition was earlier being heard along with Writ Petition (Civil) No. 123 of 1996. That petition was disposed of on 13th May 2009. The prayer in that writ petition was for a direction to the Respondents to disburse the 45% premium in lieu of the REP licences, to release the CCS to which the Petitioner was entitled, to pay compensation/damages on account of non-release of incentives, the costs and expenses of the writ petition and the refund of cost imposed by the National Consumer Disputes and Redressal Commission (NCDRC). This Court noted that the Petitioner had filed a claim petition before the NCDRC for a sum of Rs. 1.27 crores. The NCDRC rejected the said claim petition on the ground that the Petitioner was not a consumer as the Respondent was not providing any services for consideration and that there was no deficiency in the service on the part of the Controller of Exports and Imports. Costs of Rs. 10,000/- were imposed on the Petitioner.

7. As regards the prayer for payment of 45% premium in lieu of the REP licences, this Court noticed that the Petitioner had not specifically averred that the rejection of the Petitioner''s applications or failure to collect the licences after surrendering tokens was unjustified. As regards some of the applications, the relevant files were not traceable. The Petitioner had not placed on record any letter or correspondence with the Respondents in regard to the said licences.

Further the applications pertained for the period April-June 1990 and April-June 1991 whereas the writ petition was filed only in 1996. As regards the claim for damages, this Court held that no material had been enclosed with the pleadings to justify the claims. Moreover, the contentinon that if the licences had been issued they would have earned 45% premium in the open market as well as the claim for interest at 24% per annum with quarterly rests were held to be "presumptuous" and "not based on material evidence on record". The Petitioner was given liberty to file a civil suit and if required to move an application u/s 14 of the Limitation Act, 1963 for exclusion of the period during which the writ petition remained pending.

8. Likewise it was held that the claims for CCS as well as additional CCS were also not supported by definite particulars. Therefore this Court was unable to grant any relief in that respect as well. It was left open to the Petitioner to approach the office of the Director General of Foreign Trade, along with relevant documents in support of his claim, with the representation/letter for payment and disposal of his application for CCS claims in the SPS Scheme where the files/ details were not available. It was clarified that this direction was only in respect of those claims where the files were not traceable. In case the Petitioner was aggrieved by the order passed by the Respondents, the Petitioner would be entitled to ventilate his grievance in accordance with law.

9. This Court finds on a comparison of the pleadings in W.P.(C). 123 of 1996 and the present petition that they are nearly identical. Although the present petition pertain to another set of transactions, the prayers are similar to the ones in W.P.(C).123 of 1996. Likewise even for the CCS scheme, while the pleadings and documents are different, the grounds on which the claims are made are identical.

10. In the considered view of this Court, the view already expressed by the learned Single Judge of this Court while disposing of Writ Petition (Civil) No. 123 of 1996 should govern the present case as well. This court finds that the Writ Petition (Civil) No. 2152 of 1996 was also filed by the Petitioner claiming disbursement of 45% premium, the release of CCS together with interest. That writ petition also came to be disposed of by an order dated 13th May 2009 on more or less identical grounds.

11. Learned Counsel for the Respondents has raised objections concerning maintainability of the present petition under Article 226 for recovery of the amount from the Government. He relies on the decision in Suganmal Vs. State of Madhya Pradesh and Others, . Further it is pointed out that the petition talks of export transactions of 1986 whereas the Petitioner has approached this court only in 1996. It is submitted that the petition is barred by laches. It is further submitted that the question whether the Petitioner has complied with the conditions of the policy, whether he applied in time for grant of REP licences and CCS, whether he removed the objections pointed out by the Respondents within the time prescribed, are all disputed questions of fact. The Petitioner, however, contests these submissions by pointing out that all documentary proof had

already been placed on record which could easily be verified by the Respondents.

12. Having considered the above submissions, this Court is of the view that the opinion already expressed in the order dated 13th May 2009 passed by this Court in Writ Petition (Civil) No. 123 of 1996 should govern the present proceedings as well. Therefore, this court does not find a case having been made out for grant of the prayer for disbursement of 45% payment of premium on the REP licences together with the interest at 24% thereon. As regards the prayer for compensation/damages it would be open to the Petitioner to initiate appropriate civil proceedings if so advised. As regards the claims for which records are not traceable in the office of the Respondents, it is open to the Petitioner to make a detailed representation to them enclosing the documents. The Respondents will then examine the claim of the Petitioner and pass a speaking order within six months of such representation being made. All pleadings and documents including the question of delay and laches, failure to rectify and remove objections etc., will be examined by the Respondents. In case the Petitioner is aggrieved by the order to be passed by the Respondents, it will be entitled to ventilate its grievance in accordance with law.

13. The petition is disposed of with no order as to costs.

