
(2015) 03 CAL CK 0093
In the Calcutta High Court
Case No : WP No. 1013 of 2008

Sen Pet (India) Limited

APPELLANT

Vs

Development Commissioner and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Citation : (2015) 03 CAL CK 0093

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : S. Ghosh and R.S. Tiwaril, for the Appellant

Final Decision : Disposed off

Judgement

I.P. Mukerji, J.

1. The decision of the Development Commissioner dated 31st December, 2007 refusing to de-notify the area occupied by the writ petitioner, which is in the Special Economic Zone, [SEZ] is challenged in this writ.

2. Although the respondents seem to have affirmed an affidavit in opposition on 7th January, 2009 the original is not traceable in the records of the court. A copy thereof which had been served upon by the advocate on record for the respondents on the petitioner was handed up to this court. I have considered the said copy affidavit in opposition.

3. The case of the petitioner in short is that it started well as a 100% Export Oriented Unit in Falta Export Processing Zone [EPZ]. According to the respondents, this unit could only operate till 2002-2003. At or about this time the said area became part of a Special Economic Zone [SEZ]. By his letter dated 20th March, 2003 which is at page 58 of the writ petition the respondent No. 1 approved conversion of the petitioners' unit in Falta SEZ to 100% EOU outside the zone.

4. Thereafter, the affairs of the writ petitioner have been referred to the BIFR.

Proceedings in the Board are pending. For those reasons, the petitioner is unable to carry on any business and is becoming liable to penalties for its failure to achieve the export target.

5. The Commissioner has simply said in the impugned decision that according to the approval committee it was not possible to de-notify the writ petitioner of the status it enjoyed. But it appears from a perusal of the decision and subparagraph [c] of paragraph 4 of the affidavit in opposition that one of the reasons why it is not so possible is because the undertaking of the petitioner is situated in a Special Economic Zone, which is controlled by the Special Economic Zones [SEZ] Act, 2005 and Rules, 2006 which do not permit de-notification. Moreover, it is stated in the order and in paragraph 4 of the said affidavit that a Customs no objection was necessary as a huge amount of duty had not been paid.

6. The proviso to Rule 8 of the Special Economic Zone Rules, 2006 provides for de-notification of a Special Economic Zone. The proviso provides that on an application made by the developer the Board might, inter alia, recommend withdrawal of notification of a Special Economic Zone. This Board is referred to as the Board of approval in rule 4. The Commissioner on receiving an application has to forward it to the Board with his recommendation within 15 days of receipt of such an application. The Board is to make its own recommendation and forward it to the Central Government, which would take a decision.

7. Therefore, in my opinion, it was not proper for the Development Commissioner to communicate any view of the Approval Committee that it was not possible to de-notify the Special Economic Zone. He did not follow the procedure in rule 8.

8. In those circumstances, that part of the order of the Development Commissioner dated 31st December, 2007 is set aside.

9. Liberty is given to the petitioner to make a fresh application to the Commissioner for de-notification. The Commissioner will forward such application along with his recommendation in accordance with rule 8 within 15 days of receipt thereof to the Board. The Board will forward its recommendations to the Central Government within eight weeks thereof. The Central Government should take a decision in the matter within eight weeks of receipt of the recommendation of the Board. The Customs authorities may be consulted at all or any stage.

10. With these observations and directions this writ application is disposed of.

11. Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.