(2013) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1305 of 2013

Spentex Industries Ltd. APPELLANT

Vs

Commissioner of C. Ex., Cus. and Service Tax RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 294 ELT 3

Hon'ble Judges : Prakash Shrivastava, J;N.K. Mody, J

Bench : Division Bench

Advocate : Alok Barthwal, for the Appellant; Abhishek Tugnawat, Counsel, for the Respondent

Judgement

Prakash Shrivastava, J.—The writ petition is directed against the order of the respondent No. 2 dated 23-8-2012 whereby the revision application of the petitioner has been rejected. In brief, the petitioner is Star Exporter House and had exported goods i.e. 16/3 Poly Cotton Carded 8, vide shipping bills dated 4-4-2008 and 2-4-2008 and was allowed drawback. A show-cause notice was issued to the petitioner on 28-1-2009 proposing to recover the drawback amount on the ground that the petitioner had failed to submit evidence in respect of realization of the export proceeds. In terms of Regulation 9(1) of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2000 the amount representing full export value was required to be realized and repatriated to India within 12 months from the date of export, and on account of failure thereof the show-cause notice was issued. The petitioner had filed an application on 9-10-2009 for extension of time for producing the Bank Realization Certificate since the buyer of the goods was undergoing reorganization and could not make payment to the petitioner. The petitioner filed reply to the show-cause notice and the Assistant Commissioner (Exports) had passed the order dated 17-5-2010 and confirmed the demand along with interest for want of producing the Bank Realization Certificate. The appeal preferred by the petitioner before the Commissioner (Appeals) Central Excise & Customs was dismissed by order dated

21-9-2010 and the Revision Petition preferred by the petitioner before the respondent No. 2 has been rejected by the impugned order dated 23-8-2012.

2. Learned counsel appearing for the petitioner submits that the Bank Realization Certificate has subsequently been obtained by the petitioner, copy of which is filed along with the petition as Annexure P/9. He has further submitted that the petitioner has already moved to the RBI for extension of time in terms of the 3rd Proviso to Regulation 9, therefore, the matter needs to be remanded back to the Original Authority for passing the afresh order after taking into account the Bank Realization Certificate which have been subsequently obtained by the petitioner.

3. Counsel for the respondent has opposed the prayer.

4. We have heard the learned counsel for the parties and perused the record.

5. On the perusal of the record, it is found that the effect of the Bank Realization Certificate which have been subsequently obtained by the petitioner, have not been considered by the authorities below. It is also found that once the sale proceeds are realized and the realization certificate is issued, the said aspect needs consideration by the concerned authority, specially in view of the fact that the petitioner has already moved to the Reserve Bank for extension of time. The 3rd proviso to Regulation 9 specifically provides that the Reserve Bank or subject to the directions issued by that Bank in this behalf, the authorized dealer, may, for the sufficient and reasonable cause shown, extend the period of 6 months or 15 months as the case may be. In these circumstances, we are of the opinion that the petitioner is entitled to at least one opportunity to produce the realization certificate as well as the order of extension, if any, passed in favour of the petitioner in terms of proviso to Regulation 9 before the original authority.

6. Accordingly we set aside the impugned orders and remand the matter to the original authority for fresh consideration after taking into account the realization certificate and the extension order, if any produced by the petitioner, in accordance with law. The writ petition is accordingly disposed off.