
(2017) 01 DEL CK 0448

In the Delhi High Court

Case No : 2000 of 2016

T T LIMITED

APPELLANT

Vs

UNION OF INDIA AND ANR

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Citation : (2017) 01 DEL CK 0448

Hon'ble Judges : Sanjeev Sachdeva

Bench : SINGLE BENCH

Advocate : Shilpi Jain Sharma, Sanjeev Narula, Abhishek Ghai

Judgement

1. The petitioner is aggrieved by an inaction of the respondents in complying with the directions issued by a Division Bench by judgment dated 07.01.2016 in W.P.(C) 6732/2015 titled T.T. Limited vs. Union of India & Anr., whereby, the Division Bench directed the respondent No.2 to ensure that a speaking order is passed in terms of Clause (ii) of paragraph 3.14.4 (c) and 3.14.5(c) of Foreign Trade Policy, 2009 - 2014 regarding the claims made by the petitioner. The exercise was directed to be completed within a period of eight weeks from the date of decision.

2. Consequent to the said directions, the respondents have passed an order dated 12.02.2016, which is impugned by the petitioner on the ground that the same does not comply with the directions issued by the Division Bench.

3. The impugned order dated 12.02.2016 reads as under:- "Subject: To issue duty Credit Scrip Rs.4397856/- under FTP 2009-14.

Gentlemen,

Please refer to your request dated 25.01.2016, served through your advocate on the above subject. In this connection, I want to bring the following facts to your kind notice.

(a) As per para 2.9 of FTP 2009-2014, No person may claim an authorization as

a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with the provisions of FT (D &R) Act, 1992 as amended, Rules made there under and FTP.

(b) As per para 1.3 of FTP 2009-14, Central Government reserves the right in public interest to make any amendments by notification to this policy in exercise of the powers conferred by Section 5 of FT(D &R) Act, 1992 as amended.

(c) Para 3.14.4 (c) of FTP 2009-14 (added vide Notification No.44 dated 25.09.2013, reads inter alia :

"(i) Benefit of Incremental Export Incentivisation Scheme for the last quarter of 2012-13 will be limited to 25% growth or Incremental growth of Rs. 10 crores in value, whichever is less.

(ii) Claims in excess of this value will be subjected to greater scrutiny by Regional Authority"

(d) Clarification issued by DGFT office (from file no. 01/61/180/188/AM 13/PC 3 dated 23.09.2014), produced as under:

"It is informed that sub-paragraphs (i) and (ii) of each notification are independent para in both the notification Nos.44 and 43 dated 25.09.2013. The limiting of claim is clearly mentioned in the first sub-para of both notifications which fixes the upper limit of grant of benefit. (The second sub-para in both the notifications only directs RAs to exercise caution while dealing with cases of incremental growth of exports under the scheme. It does not entitle any applicant to higher levels of benefits under the scheme.

(e) In this case the double bench of Hon"ble High Court, New Delhi (consisting Hon"ble Chief Justice & Hon"ble Mr Justice Jayant Nath) has quoted the case reference as under:

While considering an identical issue, the W.P.(C) 6732/2015 & 6734/2015 Supreme Court by judgment dated 27.10.2015 in Civil Appeal No.554/2006 titled DGFT and Anothers Vs M/s Kanak Exports and Another held as under:

(i) "101. We may state, at the outset, that the incentive scheme in question, as promulgated by the Govt., is in the nature of concession or incentive which is a privilege of the Central Government. It is for the Government to take the decision to grant such a privilege or not. It is also trite law that such exemptions, concessions or incentives can be withdrawn any time. All these are matters which are in the domain of policy decisions of the Government. When there is withdrawal of such incentive and it is also shown that the same was done in public interest, the Court would not tinker with these policy decisions. This is so laid down by catena of judgment of this Court and is now treated as established and well grounded principle of law....."

(ii) "Para 18. Therefore, we do not find any substance in the contention that the amendment to paragraph 3.14.4 and para 3.14.5 of FTP 2009-14 vide

Notification No.43 and 44 dated 25.09.2013, are unconstitutional....."

In view of above mentioned facts, it is observed that this office has correctly issued the scrips (bearing nos. 0519000005 of Rs.1005828/- & 0519029543, 0519029544 for Rs.10000000/-) to you according to policy and procedure in place and in real soul and sprit."

4. Learned counsel for the petitioner submits that the judgment in the case of M/s. Kanak Export (supra), referred to in the impugned order, was not applicable in the facts of the case inasmuch as the scheme, which was in issue in the said judgment, was a different scheme namely "Target Plus". It is submitted that the petitioner was also a party in the said batch of matters and the SLP filed by the respondents had been dismissed.

5. Learned counsel for the petitioner further points out that the clarification relied upon in the impugned order has already been quashed by the High Court of Judicature at Bombay by its judgment dated 25.01.2016 in W.P.(C) 1750/2015: JSW Steel Limited vs. Union of India & Anr. [2016 Law Suit (Bombay) 73].

6. Perusal of the above impugned order dated 12.02.2016 shows that the said order merely quotes the paras of the Foreign Trade Policy and the directions issued by the Division Bench. The order does not also deal with any of the submissions made by the petitioner. There is no rationale or reasoning in the impugned order dated 12.02.2016 elucidating to how and why the petitioner is not entitled to the issuance of the Duty Credit Scrips under the Foreign Trade Policy 2009 - 2014.

7. Since the impugned order dated 12.02.2016 does not give any rationale and reasoning, the same cannot be held to be in compliance of the directions issued by the Division Bench in T.T. Ltd. (supra). The impugned order on this ground along is not sustainable and is accordingly quashed.

8. The respondents are directed to pass a speaking order within a period of six weeks from today. The respondents, while passing the speaking order, shall also take into consideration the submission of the counsel for the petitioner, noted hereinabove, with regard to the non-applicability of the judgment of the Supreme Court in Kanak Exports (supra) and the effect of judgment of the High Court of Judicature at Bombay in JSW Steel Ltd. (supra).

9. It is clarified that this Court has neither examined nor expressed any opinion on the applicability or otherwise of the judgments in the case of Kanak Export (supra) and JSW Steel Ltd. (supra). The respondents are at liberty to examine the applicability or otherwise of the said judgments while passing the speaking order.

10. The writ petition is, accordingly, disposed of in the above terms.