(1997) 07 AHC CK 0051

In the Allahabad High Court

Case No : C.M.W.P. No. 106 of 1998

Tin Mfg. Co. of India — APPELLANT

Vs

Union of India and another — RESPONDENT

Date of Decision : 27-07-1997

Acts Referred:

Citation : (1998) 3 AWC 2326

Hon'ble Judges : S.L. Saraf, J

Bench : Single Bench

Advocate : V.K. Goel, for the Appellant;

Judgement

S.L. Saraf, J.—It appears that the petitioner-company which is engaged in the business of export of tin containers, imported certain quantity of tin plates waste/ waste soluble from United Kingdom against license No. P/L/3079530 on 27th September. 1984. As per the duty exemption entitlement certificate dated 1st October. 1984 pertaining to the import licence of the petitioner, the petitioner was required to make the corresponding exports within six months of the first consignment. The finding of the Additional Director General of Foreign Trade, Government of India, is that the petitioner was not guilty of misutilisation of imports effected against the said licence. Further, the lapse of non-fulfillment of export obligation was technical in the sense that the export to the tune of 98% both in terms of quantity and value have been effected thereafter and the export could not have been effected within the prescribed period due to the circumstances beyond the petitioner''s control. Holding the same, however, the said Additional Director General of Foreign Trade imposed certain restrictions on the petitioner for a period of six months from receiving any import licence, customs clearance permit, etc.

2. As against the aforesaid order of the Additional Director General of Foreign Trade, the petitioner preferred an appeal before the Appellate Committee Cell. Ministry of Commerce, Government of India which passed an order holding that there was sufficient evidence on record to establish the fact that there were

genuine extenuating circumstances which resulted in delay in fulfillment of the export obligation : as such, the Appellate Committee quashed the orders of Additional Director General of Foreign Trade, debarring the firm.

3. I have considered the case of the petitioner very carefully. Mr. V.K. Goel has argued on behalf of the petitioner. Nobody on behalf of the respondents has appeared the merit of the case is very much in favour of the petitioner. Inspite of two orders passed in favour of the petitioner with the finding that the petitioner had not violated the provisions or conditions of Duty Exemption Entitlement Certificate, the respondents have encashed the bond of Rs. 12 lacs executed by the petitioner in favour of the first respondent. The petitioner now submits that such encashment was totally illegal and in view of the said orders passed by the two authorities, the respondents have no justification to continue to hold the encashed amount of Rs, 12 lacs with them, which in all fairness, they should have refunded to the petitioner long since. In any case, they have gone to retain the same on and from 28th of February. 1995 even when the Appellate Committee passed the order in favour of the petitioner.

4. In that view of the matter. I direct the respondents to refund the aforesaid amount of Rs. 12 lacs to the petitioner along with interest @ 15% per annum on and from 28th February, 1995, within a period of six weeks from the date of production of a certified copy of this order before respondent No. 1 by the petitioner. In the event of default in making the payment as aforesaid, the respondent will be liable to pay the interest on the said amount of Rs. 12 lacs @ 24% per annum.

5. The petition succeeds and is allowed.

