(2002) 07 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : O.W.P. 129 Of 2000

Tori Impex	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 762

Hon'ble Judges : Syed Bashir-Ud-Din, J

Bench : Single Bench

Advocate : M.I.Dar, Anil Bhan, Advocates appearing for the Parties

Judgement

1. Petitioner alleges that petitioner is a registered firm with its office at Srinagar. On orders it was to export ABS Plastic Part of Cellular Phone

Group 63 item 8 of DEPB (SIM CARD LOCK) to a firm at Dubai. Petitioner after arranging these from the market shifted goods to the Dubai

firm and filed a shipping bill with the respondents Duty Exemption Pass Book (DEPB) Scheme. Petitioner was to get 20% of incentives under

scheme on the value of the goods. The goods were handed over to the customs for onwards transmission. The shipment was allowed provisionally.

The respondent satisfied themselves with regard to the consignment and allowed petitioner to export the goods. The petitioner is en titled to

incentives on the value of the goods so exported under the Scheme. The bills are not being finalised, thereby the petitioner was force to approach

Director General Foreign Trade under the incentive under DEPB scheme. On these averments, mandamus is sought, com manding respondents to

finalise the ship ping bill under the DEPB Scheme carrying 20% incentives and restraining the respondents from inaction and direction for release of the incentives under the DEPB Scheme.

2. The respondents in their reply have averred that the respondents are investigating the matter. The goods namely SIM Card Locks meant for

mobile phones in respect of which incentive is claimed fall under scheme called Duty Exemption Pass Book Scheme. (D.E.P.B. Scheme),

governed by the ExportImport Policy of Government of India and the Hand book of Export and Import Procedures. The Director General of

Foreign Trade is to issue a D.E.P.B. SCRIP after clearance from Custom once the export takes place. The Free on Board value of exports has to

be declared by the exporter in shipping Bills filed by him with the Custom authorities. The value of the D.E.P.B. scrip is in fact exemption from

duties of customs equal to its value when the holder of the scrip import any goods. There are certain restrictions imposed by the Ministry of

Commerce and Finance of Government of India in the matter. The whole purpose is to check defrauding of the Central Government under the

guise of exports by unscrupluous elements. Viewed in this back ground, the goods exported are reported to have been valued at Rs. 411/ per

piece and the D.E.P.B. rate applied at 20%. The credit claimed comes to Rs. 82/20 per piece. Though the market price is declared at Rs. 380/

per piece. In all 12000 pieces have been exported. The respondents with the information placed with them are of the opinion that some of the

branded goods of same description were having prices of rs. 17/ per piece at the relevant time. These goods were just branded. Even considering

this as market value of goods, the entitlement to D.E.P.B. credit would be Rs. 3/40 per piece. Having prima facie come to the above conclusion,

the respondents decided to investigate the claim on merits. It has been reported that there is an over valuation with a view to claim illegal and undue

incentive benefit. It is even found that the petitioner Company is not existing at its New Delhi address. The declaration of the petitioner is found

prima facia not genuine. For the purpose of investigating the matter, number of notices were sent to the petitioner under section 108 of the

Customs Act, but the petitioner has failed to appear. On the letter of the proprietor Arif Ahmad of the petitionerfirm, 15th of January 2002 was

fixed date for its appearance, but still it failed to appear. In such circumstances, when the matter is under enquiry and investigation and no final decision is taken in the matter, primarily due to noncooperation and nonappearance of the petitioner, the writ petition is not tenable.

3. The writ jurisdiction of this court in the matter is also questioned. It is stated that the cause of action in the case has arisen beyond territorial

jurisdiction of State of Jammu and Kashmir. The matter pertains to export of goods through Air Cargo Complex, Mumbai and the enquiry with

regard to incentives claimed by the exporter is also being held at Mumbai. The export clearance of goods and provisional assessment of the

Shipping Bill are all matters taken up and dealt with beyond the jurisdiction of Jammu and Kashmir High Court.

4. The matter of finalising the ship ping bill and 20% incentives to which petitioner has contracted on the value of the goods exported under

D.E.P.B. Scheme is under consideration of the authorities. The finalisation of the matter is delayed for noncooperation of the petitioner despite

summons and intimations. He is not appearing before the authorities. The authorities have entertained doubt as to the actual value of the export

consignment of the goods in question in the backdrop of the counter averments. It is for the petitioner to satisfy respondents as to the value of the

goods and petitioner's entitlement to claim D.E.P.B. incentives of exportation goods and value thereof. No final orders are passed in the case.

Petition is obviously premature at this stage.

5. Disputed questions of fact are raised in the matter, while as the petitioner claims incentive/credit on the value of the shipping bills under the

DEPB Scheme, the respondents have cast doubt on the genuiness of the petitioner's move to get benefit under the D.E.P.B. Scheme. They have

not only questioned the market price of the items in question, but have also launched investigations and inquiries to determine the actual value of the

exported goods for incentive purpose. Even petitioner is stated to be non existent at New Delhi address (viz. 33 Hauz Khas village New

Delhi110016), as shown in the Registration Form (Registration Certificate) AnnexureA. Petitioner's lack of cooperation is stated delaying the

outcome of the enquiry. The respondents counsel goes to the extent to submit that the petitioner is intentionally avoiding to appear, as he has no

case to place before the competent authority. The investigations are conducted by the Director General of Revenue Intelligence (DRI). Delay is only because of the petitioner and not by respondents. Once show cause is issued to petitioner, then for settlement of raised issues mechanism is

provided by the statute. As long as petitioner is not to cooperate the conclusion of enquiry is bound to be delayed.

6. In the Registration form the ad dress of Head Office of the firm is shown as 33 HauzKhas village New Delhi 110016. Even in the Registration

Certificate AnnexureA, it is so. The articles in question are shipped at Mumbay. The shipping bill is provisional and assessed at Mumbai. The final

assessment with regard to the value of the goods exported for purposes of credit/ incentive under B.E.P.B. Scheme is again a matter being dealt

with by the competent authority at Mumbai. All the respondents except Respondent No.1, who is posted at Delhi are based at Mumbai. The

matter is being investigated/enquired into for the purpose of credit/incentive/ enquired Scheme again at Mumbai. The annexure enclosed with the

writ petition are issued by the authorities at Mumbai In such circumstances, the jurisdiction of this court cannot be invoked in the matter

7. In the above view of the matter, the writ petition is not maintainable and is dismissed in limine.