
(2016) 01 DEL CK 0143
In the Delhi High Court
Case No : W.P. (C) 6732 and 6734/2015

T.T. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 19(1)(g)
Foreign Trade (Development and Regulation) Act, 1992 — Section 5

Citation : (2016) 227 DLT 88

Hon'ble Judges : G. Rohini, C.J. and Jayant Nath, J.

Bench : Division Bench

Advocate : Shilpi Jain Sharma, Advocate, for the Appellant; Sanjay Jain, ASG and Jasmeet Singh, CGSC, for the Respondent

Final Decision : Disposed off

Judgement

G. Rohini, C.J.

1. The petitioner in these two petitions is a company registered under the Companies Act, 1956. Aggrieved by the action of the Director General of Foreign Trade in rejecting the petitioner's requests for grant of "Duty Credit Scrips" for the value of Rs. 79,83,885.11 and Rs. 4,59,94,671 under the Foreign Trade Policy (FTP) 2009-14, these two writ petitions are filed.

2. The petitioner company is in the business of trading in textiles both in domestic and international markets. It is also an Importer - Exporter Card (TEC) Holder.

3. In exercise of the powers conferred under Section 5 of Foreign Trade (Development and Regulation) Act, 1992 (for short "the Act"), the Department of Commerce, Ministry of Commerce and Industry, Government of India, by Notification No. 1/2009-2014 dated 27th August, 2009 issued the Foreign Trade Policy 2009 - 2014 which came into force with immediate effect.

4. By the Notification dated 28.12.2012 the Government of India has formulated

a scheme called Incremental Exports Incentivisation Scheme by adding paragraph 3.14.4 to FTP 2009-14. As per the said scheme an IEC holder would be entitled for a Duty Credit Scrip at the rate of 2% on the incremental growth achieved by it during the period 1.1.2013 to 31.3.2013 compared to the period from 1.1.2012 to 31.3.2012 on the FOB value of exports. Clause (c) paragraph 3.14.4 provided for the circumstances for which the incentive will be admissible.

5. Subsequently, vide notification dated 18.4.2013, FTP 2009-14 has again been amended by adding paragraph 3.14.5 under which another scheme called Incremental Exports Incentivisation Scheme (IEIS) on annual basis has been introduced. Under this scheme, an IEC holder would be entitled for a Duty Credit Scrip at the rate of 2% on an incremental growth achieved by it during a current year compared to the previous year on the FOB value of the exports. Clause (c) of the said Scheme makes it clear that the incentive will be admissible only if the IEC holder has achieved growth in the financial year 2013-14 vis-a-vis. financial year 2012-13 and that the quantum of benefit will be calculated on the incremental growth achieved subject to eligibility criteria specified in para 3.14.4(d) of FTP 2009-14.

6. On 25.9.2013 the Government of India issued Notification Nos. 43 and 44 thereby amending paragraphs 3.14.5(c) and 3.14.4(c) respectively. As per Notification No. 43 dated 25.9.2013, the following two sub-paragraphs have been added to the paragraph 3.14.5(c);

"(i) Benefit of Incremental Export Incentivisation Scheme for the year 2013-14 will be limited to a scrip of a value not exceeding Rs. 1 crore per IEC.

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

7. Vide Notification No. 44 dated 25.9.2013, the following sub-paragraphs have been added to paragraph 3.14.4(c) of FTP 2009-14

"(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."

8. In terms of Schemes dated 28.12.2012 and 18.4.2013, the petitioner made two applications claiming Duty Credit Scrip for Rs. 90,42,165 and Rs. 4,59,94,671.

9. There was exchange of correspondence between the office of the Director General of Foreign Trade and the petitioner regarding certain additional particulars and the petitioner claims that all the requisite documents were furnished. However, it appears that the Director General of Foreign Trade has issued the Duty Credit Scrips for Rs. 50 lakh and Rs. 1 Crore only as against the

petitioner's claims of Rs. 90,42,165 and Rs. 4,59,94,671.

10. Hence, these two petitions seeking a declaration that the Notifications Nos. 43 and 44 dated 25.9.2013 are unconstitutional and also seeking a direction to the respondents to issue Certificate Credit Entitlement for the amounts claimed by the petitioner.

11. It is inter alia contended in the writ petitions that the action of the Director General of Foreign Trade in reducing the incentive is arbitrary and illegal since even as per the Schemes as amended on 25.9.2013, the claims in excess of Rs. 1 crore cannot be rejected in limine but the same require consideration subject to greater scrutiny by Regional Authority. The petitioner also impugns the amendments to Schemes vide Notification Nos. 43 and 44 dated 25.9.2013 contending that the same is violative of Articles 14 and 19(1)(g) of Constitution of India inasmuch as it takes away the vested right acquired by the petitioner under the Schemes to claim Duty Credit entitlement on achievement of the incremental growth. The further contention is that the restriction imposed under the impugned Notifications dated 25.9.2013 has virtually frustrated the very object and purpose of FTP 2009-14.

12. In the counter affidavit filed on behalf of the respondents it is contended that the impugned notifications dated 25.9.2013 are only clarificatory in nature and they are well within the scope of FTP 2009-14. It is also contended that the claims made by the petitioner were on misinterpretation of the Schemes and misconceived. While denying the allegations made by the petitioner, it is further submitted that the incremental growth is not the only eligible criterion in the Schemes but it is also necessary to fulfill the criteria of exports to specific markets.

13. We have heard the learned Counsel for the petitioner as well as Sh. Sanjay Jain, the learned ASG, appearing on behalf of the respondents.

14. While reiterating the grounds urged in the writ petitions, it is further contended by the learned Counsel for the petitioner that the amendment to the Schemes vide Notification dated 25.9.2013 cannot be made applicable to the petitioner's claims which were made prior to the said Notifications dated 25.9.2013. In other words, the submission of the learned Counsel for the petitioner is that the Notifications dated 25.9.2013 cannot be enforced with retrospective operation.

15. On a careful consideration of the FTP 2009-14 as well as the Schemes in question vide paragraphs 3.14.4 and 3.14.5 read with the amendment vide Notifications dated 25.9.2013, we do not find any substance in the contention of the petitioner that the impugned amendments are sought to be enforced by the respondents with retrospective operation. We agree with the submission of the learned ASG that the amendments vide Notification Nos. 43 and 44 dated 25.9.2013 are only clarificatory and in no way affect the rights accrued to the petitioner to claim the benefit of Duty Credit.

16. Even otherwise the law is well settled that grant of concession or incentive being the privilege of the Government, the Government has right to give retrospective operation or even to withdraw the same for justifiable reasons and in public interest. While considering an identical issue, the Supreme Court by judgment dated 27.10.2015 in Civil Appeal No. 554/2006 titled Director General of Foreign Trade and Another v. M/s. Kanak Exports and Another, , VIII (2015) SLT 410, held as under;

"101. We may state, at the outset, that the incentive scheme in question, as promulgated by the Government, 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 judgments of this Court and is now treated as established and well grounded principle of law....."

17. Therefore, we do not find any substance in the contention that the amendment to paragraph 3.14.4 and 3.14.5 of FTP 2009-14 vide Notification Nos. 43 and 44 dated 25.9.2013 are unconstitutional. However, we find force in the submission of the learned Counsel for the petitioner that in view of sub-paragraph (ii) added to paragraphs 3.14.4(c) and 3.14.5(c) of FTP 2009-14 vide impugned notifications dated 25.9.2013 which states "Claims in excess of this value will be subjected to greater scrutiny by Regional Authority", the petitioner's claims ought not to have been rejected without assigning any reasons. It appears to us that the Clause (ii) requires the Regional Authority to pass a reasoned order on application of mind to the contents of the applications which fall under the said Clause. We therefore, consider it appropriate to direct the Respondent No. 2 to ensure that a speaking order is passed in terms of Clause (ii) of paragraphs 3.14.4(c) and 3.14.5(c) of FTP 2009-14 regarding the claims made by the petitioner. Such exercise shall be completed within 8 weeks from today. For the aforesaid reasons though we do not find any justifiable reasons to grant the prayers (a) and (b) in the petitions to declare the impugned Notifications dated 25.9.2013 as unconstitutional, the writ petitions are hereby disposed of with the above mentioned directions.