(2014) 12 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No. 2011 of 2014

UHDE India Private Limited — APPELLANT

Vs

The Union of India — RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2014) 12 BOM CK 0115

Hon'ble Judges : S.C. Dharmadhikari, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Rafiq Dada, Senior Counsel, a/w Ranjeet Mathani, i/b. Economic Law Practice, Advocate for the Appellant; Pradeep S. Jetly i/b. S.V. Bharucha, Advocate for the Respondent

Judgement

1. The Petitioner before us is a company incorporated under the provisions of the Indian Companies Act,1956 and having its registered office at the address mentioned in the cause title.

2. The Petitioner is engaged in the provision of a wide range of engineering, procurement, construction and management services as well as lumpsum turnkey execution of projects for various industrial plants as set out in first para of this Writ Petition. The Petitioner claims that majority of these overseas assignment of the Petitioner are of the nature and undertaken either independently or together with the parent company or its group companies. The Petitioner is a recognized export house and for last 14 years.

3. The authorities under the Foreign Trade Development and Regulation Act, 1992 are being approached on the footing that the application was made by the Petitioner on 24th January, 2014 for availing the benefit of duty credit entitlement under the Served From India Scheme (for short referred to ''SFIS''). That application was dealt with by the authority and the Respondent no.4 communicated to the Petitioner the following;

"Your application is deficient due to following reasons:

1. Your request for SFIS stands rejected on the following ground:

1.From shareholding pattern its clear that the majority shares (80.43%) are held by M/s. Thyssen Krupp UHDE GmBH, Germany. So, M/s. UHDE India Pvt. Ltd. is not even a company having majority shareholding by an Indian or an Indian Firm.

2.M/s. UHDE India Pvt. Ltd. is promoting Thyssen Krupp brand and not any Indian Brand. Policy Interpretation Committee in its decision in the meeting held 27.12.2011 clarified that SFIS can be provided only when Indian brand is promoted. Our records show that you have already received SFIS benefits in other FYs. Therefore, you are directed to surrender these benefits immediately.

You are requested to remove above deficiencies within a period of 30 days from the date of issue of this letter, otherwise your case will be treated as closed."

4. The Petitioner submits that the communication has been issued without any opportunity being given to them to represent before the authority. They also submit that the decision of the Policy Interpretation Committee taken in its meeting dated 27th December, 2011 is assailed on the footing that it would not govern the cases of parties like the Petitioner. They have been granted a certain status and entitlements for a number of years.

5. Such being the nature of challenge and varied contentions apart from the above being raised before us, we inquired on the earlier occasion from Mr. Jetly as to why a senior level officer of Ministry of Commerce, Government of India, cannot consider the grievance of the Petitioner and with a independent and impartial mind. At our request Mr. Jetly sought certain instructions.

6. Mr. Jetly has been fair to submit before us that the authorities initially confused themselves and submitted before this Court that the matter of this nature need not be examined by the Court because there are alternate remedies provided under the Act itself and to question an adjudicatory process. The provisions in that regard including of an Appeal and review have been brought to our notice in the affidavit filed in reply and during oral submissions. However, when Mr. Jetly was told to obtain specific instructions and in terms of our order passed on 1st December, 2014 what has been informed by Mr. Jetly and on instructions is that the Secretary in the Department of Commerce, Government of India will hear the Petitioner or their representatives and duly consider their grievances not only in relation to the communication at page 39 but with regard to the interpretation placed by the Policy Interpretation Committee in its decision in the meeting dated 27th December, 2011. The Secretary will apply his mind, independent of any stand taken before us in the affidavit in reply and equally in some communications or written instructions given to Mr. Jetly. He would consider as to whether the SFIS can be provided only when Indian brand is promoted and whether the Petitioner before us is a company which promotes an Indian brand.

7. We feel that we should refrain from expressing any opinion. These are not

matters which ought to be brought before a Court of law. How and in what manner the foreign trade needs to be developed and regulated is essentially to be decided by the authorities under the Parliamentary statute. If they evolve any policy or take any policy decisions, then, it is equally open for them to consider as to whether cases of parties like the Petitioner would fall within or need to be protected or their rights recognized by any interpretation and made appropriately of such policy decisions. The Court must not examine these issues as not only they are intricate but essentially of a policy decision and to be taken by the executive. It is in the larger public interest and of promoting foreign trade and equally developing but regulating it that the state or the Central Government before us must take such decisions. It may be that the Director General or his colleagues are of a particular view but our anxiety is that matters and issues brought like the Petitioner before us ought to be examined by the Ministry and at the Ministry level so that any doubt or confusion with regard to interpretation of the policy are cleared and the Petitioner can then take a definite stand.

8. We would now expect a secretarial level officer as has been assured, namely, the Secretary, Ministry of Commerce, Government of India, to take a decision uninfluenced by any considerations other than noted by us above and in terms of law as expeditiously as possible. The decision shall be reached without being influenced by the affidavits placed on record and the stand of the Director General reflected therein.

9. We would expect such a decision to be taken and considering all relevant and germane materials as expeditiously as possible and by 30th April, 2015.

10. It is agreed before us by the Respondents that until the decision is taken as above and communicated to the Petitioner shall not be acted upon and the status quo as prevailing today shall be maintained. In other words, nothing will be done in pursuance of the letter/communication at page 39 so as to adversely affect the status or the rights of the Petitioner. This arrangement shall be without prejudice to the rights and contentions of both sides. We clarify that we express no opinion thereon. It is only to highlight the nature of the controversy that we have made observations as above. Beyond that, we should not be taken to have held either way. It would be open for the Petitioner to take such steps as are permissible in law, in the event, the decision taken by the Secretary and communicated to them is adverse to their interest. However, we would expect that, in the event, such an adverse decision is communicated to the Petitioner that shall not be implemented or executed for a period of eight weeks from the date of this receipt of such communication to the Petitioner so as to enable the Petitioner to avail all legal remedies. The Writ Petition is disposed of in these terms. There would be no orders as to costs.

