

(2008) 09 KAR CK 0069

In the Karnataka High Court

Case No : Writ Petition No. 5680 of 2006 (GM-Res)

Varalakshmi Exports

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-09-2008

Acts Referred:

Foreign Trade (Development and Regulation) Act, 1992 — Section 11

Citation : (2010) 259 ELT 344

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Lakshminarayan, for Kiran S. Javali, for the Appellant; Raghavendra B. Hanjer, for N.R. Bhaskar, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

1. The writ Petitioner is a person who was favoured with an advance licence extending duty exemption concession for importing mulberry raw silk fabrics for value of more than Rs. 150 lakhs and failed to fulfil the export obligation of even 10% of the target and therefore was levied penalty" u/s 11 of the Foreign Trade (Development and Regulation) Act, 1992. It is unable to get over this order and of levy of penalty by the adjudicating authority, in appeal before the appellate authority notwithstanding one round of litigation before this Court and having even failed to make a pre-deposit of 10% of the penalty amount before the appellate authority and the appellate authority having dismissed the appeal looking into the merits, the Petitioner is before this Court seeking for quashing of adjudication dated 23-12-1999 copy of which is produced at Annexure to the writ petition and the order of appellate authority dated 15-9-2005 is at Annexure-E to the writ petition,

2. A further order of the Central Government which is of no consequence dated 20-2-2006 produced at Annexure-F is also sought to be quashed in this writ petition. The Respondents on issue of notice entered appearance and filed their objections.

3. Appearing on behalf of the Petitioner, Sri Lakshminarayan learned Counsel for the Petitioner submits that no opportunity was given to the Petitioner, to the sense, the Petitioner claiming to be the partner of the firm had not been heard personally; that a notice issued to the firm cannot be automatically taken as an opportunity given to the partners of the firm and the adjudicating authority has not taken note of the development which prevented the Petitioner from fulfilling the export obligation in time and that the authorities had also not bestowed attention to the possibilities of regularising the short fall in terms of para 128 of the Import and Export Policy for the year 1992-97 the period during which an import licence had been given and therefore, the orders are vitiated.

4. There is not much dispute that the Petitioner who was required to fulfil the export obligation of the value of Rs. 4.65 crores miserably failed in doing so. The finding of the adjudicating authority was that the obligation fulfilled was hardly about 8% of this value and in respect of the balance there was only a breach.

5. With regard to the argument that each partner should have been heard and the penalty is only on the firm, the argument is totally devoid of merit for the reason that the firm acts only through its partners and import by a partnership firm is in turn only by the partners. Hence, no need to issue show cause notice to every partner of the firm, but what is important is, if any partner failed to avail of the opportunity and if the adjudicating authority was constrained to observe that the Petitioner-firm was only seeking adjournments and not availing the opportunity, it is definitely not a case of want of opportunity. Therefore, the ground of not providing opportunity does not sustain.

6. So far as the argument that the authority should have shown the awareness to extend the benefit of Provision under Paras 128A and 128B of the policy is concerned a perusal of the order of the adjudicating authority which reads as under:

Since the firm has not fulfilled 92.36% of Export obligation, the advance licence has to be converted into quantity based advance licence and regularised as per para 128A(iii) of Hand Book of procedures (Vol. 1) 1992-97, which entails payment of customs duty with 24% interest on the excess imports and surrender of special import licence of the value of exports.

From the above, it is amply clear that the firm has not paid either the customs duty nor the payment of composite fee nor surrendered the REP licence. Moreover, the firm is a regular exporter and knows the provisions of the policy thoroughly since he is exporting from many years. Even though several opportunities of personal hearing were given to the firm, no responsible person has appeared nor have they undertaken at any time to pay the duties. They are merely engaged in correspondence from 30-6-97 and using dilatory tactics without actually exporting even one extra kilogram silk fabric. When the export obligation period has expired, the public notice No. 7 read with public notice No. 44 also gives opportunity to do exports provisionally. However, they have failed

to utilise this opportunity too. Moreover, the import material was not available at the time of the two inspections conducted by this office.

clearly demonstrates that the adjudicating authority was not only aware of these provisions but also has examined their applicability to the Petitioners' case.

7. The other apprehension expressed by the learned Counsel for the; Petitioner that the penalty is imposed on each partner, is more an imaginary one for the reason that the penalty is not imposed on each of the partners at Rs. 1.70 crores, but on the firm and the partners are jointly liable to pay the penalty. But for the realisation of the penalty amount, the authorities can look up to any of the partners. Whether that partner had been personally issued with a notice or not.

8. Under the partnership Act, it is the law that all the partners are liable for the liability of the firm and no partner can escape such liability on any technicalities. No ground is made out for interference with the order in exercise of the writ jurisdiction.

9. Therefore, this writ petition is dismissed.