

(2001) 01 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No. 2554 of 1994 (T-TAR)

Wipro Infotech Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 75 ECC 498 : (2001) 130 ELT 27 : (2001) 3 KCCR 1749

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Rajesh Chander Kumar, for the Appellant; M.V. Vedhachala, C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this petition, the petitioner has prayed for issuance of writ in the nature of writ of certiorari quashing the order dated 18-3-1993 bearing No. F. No. 601/4201/14-15/ 93-DPK dated 18-3-1993 as well as the consequential endorsement bearing No. F. No. 601/4201/14-15/93-DPK dated 10-11-1993, marked as Annexure-"J" and "N" respectively to the writ petition, and prayed for issuance of writ of mandamus directing the respondent to grant the duty drawback to the petitioner against the application dated 8-3-1993, (Annexure-"H") and to issue such orders, directions or reliefs as this Court deems fit.

2. The facts of the case in the nut-shell are that vide Annexure-B to the writ petition, the petitioner entered into an export contract with M/s. J.V. Belcom, Minsk, Belarus, for supply of 513 numbers of EX-1000 Printers under Supplement No. 7 dated 24-1-1992 to their export contract bearing No. Wipro/BELCOM/1/91 dated 15-5-1991 and that payments for the export were being made, according to petitioners, through a letter of credit. Same were being realised from an Escrow account maintained by M/s J.V. Belcom with the City Bank, Bombay. The petitioner's case is that in order to avail the benefits of the Duty Exemption

Scheme, the petitioner through their letter dated 27-4-1992 applied for an Advance Licence under token No. 21 with the Joint Controller of Imports and Exports popularly known as of Director General of Foreign Trade for the balance of 413 numbers of printers to be exported and the C.I.F. value thereof has been mentioned as Rs. 20,12,334.00. The petitioner's case is that the petitioner's application was rejected vide order dated 6-7-1992, as communicated by the Chief Controller of Imports and Exports and it, vide order/endorsement dated 6-7-1992 was rejected on the ground that the value addition offered for R.P.A. exports was very low. The petitioner further alleges that the petitioner was advised to file a fresh application for advance loan by indicating the value addition norm to 223% as against 108% and he filed a revised application vide letter dated 9-10-1992 wherein the C.I.F. imports were shown as Rs. 12,58,967.00. The petitioner vide communication dated 15-1-1993, was informed by the Chief Controller of Imports and Exports that his second application was rejected on the ground that the export realisation was not in U.S. Dollars and same could be considered only if export obligations were realised in U.S. Dollars. Pursuant to that, the petitioner forged their application for advance licence as it was impossible to realise the export in U.S. Dollars. The petitioner further alleges that when his application for advance licence was rejected, they filed an application for availing the benefits of the duty drawback scheme. The petitioner alleged in paragraph 9 of the petition that the benefits of the duty-drawback scheme could not be availed of earlier in view of the legal position as then existed, and it was to the effect that if advance licence was being availed of simultaneously, then duty drawback scheme benefits could not be availed. The petitioner's case is that he moved therefore an application on 8-3-1993 claiming the benefits of the duty drawback scheme. The petitioner's application, vide letter dated 18-3-1993, had been rejected on the ground that it was barred by time. According to the petitioner's case, thereafter he submitted an explanation indicating the facts and circumstances on account of which the delay was caused in moving the application for availing the drawback scheme benefits. But the Ministry of Finance, vide letter dated 21-4-1993, rejected that application and that was communicated to the petitioner on 29-3-1993. The petitioner addressed another letter on 24-5-1993 for acceptance of their claim for drawback and also filed an application dated 7-10-1993 for exercise of power conferred on the Central Government vide Rule 15 of the Customs and Central Excise Duties Drawback Rules, 1971, for relaxation. According to the petitioner, same were rejected by the respondent No. 1 vide letter dated 10-11-1993. Feeling aggrieved from that order, the petitioner has come up before this Court by this petition under Article 226 of the Constitution of India.

3. On notice having been issued to the respondents, counter affidavit had been filed on 9-3-1995. I feel sorry to mention that in the file, the counter affidavit has not been placed. The learned counsel for the petitioner accepts that a copy of the counter affidavit/statement of objections had been served on the petitioner. The learned Standing Counsel for the Government of India namely

Shri M.V. Vedhachala has supplied to this court an electrostatic copy of that affidavit.

4. In the counter affidavit it has been stated that, under proviso to Rule 6, limitation could be extended for thirty days more beyond what is prescribed. It has been further stated as under :-

"It is further submitted that the petitioner has no right under Rule 15 of the Drawback Rules to seek for waiver of compliance with the requirement of the Rule 6."

The further objection of the respondents that,

"Since mid eighties, this Ministry has been consistently following the policy of not invoking the general powers of relaxation under Rule of Customs and Central Excise Duties Drawback Rule, 1971, in cases where brand rate applications have been filed after expiry of 60 days (normal time limit of 30 days and grace period of further 30 days) from the date of export. In view of such a policy decision, the request for special dispensation in the matter of considering the petitioner's request for fixation of brand rate of Drawback could not be considered."

5. I have heard the learned counsels for the parties, as mentioned earlier.

6. It had been contended that power has been given to the Government to be exercised to grant relaxation in cases where the circumstances and conditions prescribed by Rule 15 of the Customs and Central Excise Duties Drawback Rules, 1971 are shown to be established to the satisfaction of the Government. Where it is not shown to the satisfaction of the Government, no doubt, Government can reject it. But satisfaction of the Government has to be recorded before granting the relaxation or exemption. The learned counsel for the petitioner contended therefore under this rule there was a duty imposed on the authority to consider petitioner's application for exemption from the rule and apply its mind to the question and record a finding about satisfaction or otherwise. But the authorities have failed to exercise the jurisdiction and the power vested in it namely, according to the petitioner's counsel, the Central Government has failed to perform a duty that had been cast under the rule. The learned counsel contended when power had been given to the Government to grant exemption, that power is meant to be exercised or in another way it can be said that it confers a right to the persons in the circumstances specified under the Rules to approach the Government for seeking exemption and it is for the Government to firmly decide and make up its mind whether those circumstances have been established which are condition precedent for exercise of such powers and thereafter, if answer is in affirmative the Government may exercise that power. The learned counsel contended that the application could not be rejected under Rule 15 simply on the ground that a policy decision had been taken. The learned counsel contended that a policy decision cannot render the rule nugatory unless the rule is wiped off by the amendment.

7. These contentions of the learned counsel for the petitioner have hotly been contested by Shri M.V. Vedhachala, learned Standing Counsel for the Union of India.

The learned counsel contended that under the provisions of Rule 6 limitation is prescribed namely 30 days" period for moving an application. Power is given to the Government under Rule 6 proviso to the extent of period for 30 days" more from the date of expiry of original 30 days" and not beyond that. The learned Central Government Standing Counsel contended that period could not be extended beyond 60 days" and therefore, power under the Rules cannot be exercised as well.

8. I have applied my mind to the contentions raised by the learned counsels for the parties.

9. Rule 6 sub-rule (1) of the Customs and Central Excise Duties Drawback Rules, 1971 reads as under :-

"6. Cases where amount or rate of drawback has not been determined. -

(1) (a) where no amount or rate of drawback has been determined in respect of any goods, any manufacturer or exporter of such goods may, within thirty days from the date of export of such goods apply in writing to the Central Government for the determination of the amount or rate of drawback therefore, stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components:

Provided that the Central Government may, if it is satisfied that the manufacturer or exporter was prevented by sufficient cause from filing the application (within the aforesaid time), allow such manufacturer or exporter to file such application within a further period of thirty days.

(b) On receipt of an application under clause (a), the Central Government shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods."

Rule 15 of the Rules reads as under:-

"15. Power to relax.- If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has , for reasons beyond his control, failed to comply with any of the provisions of these rules and has thus not been entitled to drawback, it may, after considering the representations, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rules and allow drawback in respect of such goods."

10. The purpose of two rules as a perusal thereof indicates two different purposes. One is ordinarily authorising a party to move for determination of the amount or rate of drawback and the period is prescribed to be thirty days from

the date of export of goods and the proviso, no doubt, provides that if the Central Government is satisfied about sufficient cause being shown which prevented the manufacturer from filing the application, within the period of thirty days, it may condone the delay and entertain the application. That is, the condonation of delay can be made to the limited extent that from the date of expiry of original thirty days" period, the delay can be condoned for a further period of thirty days only. This is what is provided under the Rule 6. The purpose of Rule 15 is to confer a power on the Government to remove the defects i.e. arising non compliance with certain rule and to exempt the exporter or agent from provisions of such rule if the Government is satisfied that, for the reasons specified, it is beyond the control of the exporter to comply with any of the provisions of these rules i.e., rules of 1971 and, on account thereof he has become disentitled to drawback under Rule 6. Rule 15 appears to have been framed with intent to save the interest of exporters who failed to comply with the rule such as Rule 6 as it was not within his control - under the circumstances of the case, - to make due compliance with Rule 6. Then if the conditions under Rule 15 are established, then it is open to the Central Government - for reasons to be recorded, for its finding and satisfaction in writing - to pass an order exempting the party or exporter from the operation and clutches of the rule concerned and it has been given power to allow the benefit of drawback in respect of goods. But if the aforesaid conditions are not established to the satisfaction of the Central Government, then the Government is not bound in that case to grant exemption under Rule 15 and to allow drawback. When the power is given to do a certain thing and benefit flows on power being exercised in favour of some party, then that party has got a right to claim that benefit and to claim exercising of that power by that authority. No doubt, it is a right vested in the party under Rule 15 to approach the authority and seek the exemption as referred to and seek for grant of drawback thereunder. That to claim exercise of that power of, and, by the Central Government to consider his case accordingly under Rule 15 of the Customs and Central Excise Duty Drawback Rules, 1971, is a right of an exporter in such cases where the conditions to be satisfied under Rule 15 are shown and established to be existing to seek the order granting that relief. It is not open to the Government to say that we have taken a policy decision as a general rule not to exercise powers under Rule 15 though Rule 15 requires such powers to be exercised in genuine cases where conditions of Rule 15 are satisfied. We believe in rule of law. Rule of law has to operate. Rules framed under the Act unless found to be ultra vires and illegal, they are meant to be followed by everyone and policy decisions cannot override the statutory powers either under the Act or under the Rules nor their exercise. When I so opine, I find support from the decision of this Court in *M/s. Wipro Information Technology Limited, Bangalore Vs. The Under Secretary (Drawback Directorate), Department of Revenue, Ministry of Finance, New Delhi*, .

11. In this view of the matter, in my opinion, the stand taken by the respondents 1 and 2 and the rejection of the application for grant of exemption because of

their policy decision cannot be said to be justified one or in accordance with law. Without expressing any opinion whether the petitioner has established any case under Rule 15, I think it would be proper at this stage to allow the writ petition and to quash Annexure-"J" and "N" and to issue a necessary direction to the respondents.

Thus considered, the writ petition is hereby allowed. The letters endorsement dated 18-3-1993 (Annexure -"J") and letter dated 10-11-1993 (Annexure - "N") are hereby quashed. The writ in the nature of mandamus is issued to the respondents to consider the petitioner's application under Rule 15 of the Rules and if the application under Rule 15 satisfies Rule 15 and the conditions thereunder namely if the applicant-petitioner proves and establishes that it was beyond his control to comply with the rule and on account of that he has been deprived of the benefit of drawback scheme, it is only then i.e., on above satisfaction of the authority open to grant exemption. But if the application under Rule 15 itself is dismissed and the cause is found not to have been established to the satisfaction of the Central Government, then the applications under Rule 6 will automatically have to be dismissed. But if the Government opines that the petitioner's application is fit one for exercise of powers under Rule 15, then and then only the application under Rule 6 will be considered ignoring the requirement of period of limitation which is required under the Rules, otherwise as period of more than 60 days had expired and passed away and the application moved no doubt has been moved beyond that period, the application could not be considered .

Thus considered I am of the view and I do hold the order dated 18-3-1993 and 10-11-1993 i.e., contained in annexures-"J" & "N" impugned have not been passed keeping in view the provisions of Rule 15, without due application of mind to Rule 15 itself and to have been being based on non judicious consideration, so have to be quashed.

The application under Rule 15 has to be considered in the context of the prerequisite conditions on the establishment of which only power under Rule 15 may be exercised.

The Central Government i.e., respondents are hereby directed to consider and dispose of the application under Rule 6 and Rule 15 within a period of four months from the date of communication of the copy of the order of this Court.

The writ petition is allowed in above terms. Let the above directions be issued to the respondent.

Costs of the petition to be borne by the parties respectively.