(2021) 07 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5305 Of 2021

Worldwide Tradelinks APPELLANT

Vs

Commissioner of Customs (Exports) & Another RESPONDENT

Date of Decision : 29-07-2021

Acts Referred:

Citation : (2021) 07 P&H CK 0032

Hon'ble Judges : Ajay Tewari, J;Vikas Bahl, J

Bench : Division Bench

Advocate : Deepak Gupta, Tajender Joshi, Sunish Bindlish, Gagandeep Singh Malhotra

Final Decision : Disposed Of

Judgement

Financial Year,Domestic,Export (In Crore)

2017-18,44.75,79.64

2017-18,34.00,75.00

registered and there is sufficient validity period left. It is further stated that once the competent authority has issued the scrips, it is the duty of the",,

respondents to register the same as a matter of procedure and that the custom authorities cannot sit over the decision of an independent authority.,,

That on 05.03.2021, this Court while issuing notice of motion in the present case, passed the following order:-",,

CWP-5305-2021 Worldwide Tradelinks V/s Commissioner of Customs Present: Mr. Naveen Bindal, Advocate, for Mr. Deepak Gupta, Advocate, for",,

the petitioner.,,

*** Learned counsel for the petitioner states that at the time of passing of order dated 12.11.2020 this Court in CWP No.16214 of 2020 (Annexure P-,, 10), an affidavit dated 11.11.2020 was placed on record by the Additional Director General, Directorate General of Foreign Trade, Green Field,",,

Ludhiana. Thereafter, the duty credit script was issued to the petitioner under the Merchandise Exports from India Scheme (MEIS). Despite issuing",,

this duty credit script, petitioner has not been registered by the respondents.",,

Notice of motion.,,

At this stage, Mr. Tajender Joshi, Advocate, accepts notice on behalf of the respondents and seeks time to get instructions. Copy of this petition be",,

supplied to learned counsel for the respondents during the course of the day. Adjourned to 16.03.2021.""",,

Thereafter on 14.07.2021, DRI was impleaded as respondent No.2. The respondent No.2 has filed its written statement and has opposed the prayer",,

made in the writ petition. It is the plea of the DRI in the written statement that the petitioner has committed a fraud and the investigation regarding the,,

same is underway. It has been stated that the petitioner was indulging in over-valuation in their exports to avail undue export benefits and were also,,

showing excessive purchase of raw-material in order to misuse the facility of IGST refund. It is however, admitted that the petitioner had deposited",,

Rs.50 lakhs towards any duty liability that may arise during the course of investigation, but the case of the DRI was that it has been deposited",,

voluntarily. It is stated that DRI was carrying out an extensive investigation and had requested various overseas offices for causing overseas enquiry.,,

It has been stated that the DRI had requested the various authorities including the DGFT not to grant export incentives without NOC from the DRI.,,

The DRI has Â admitted the issuance of letter dated 22.10.2020 communicating its no objection to custom authorities to release export incentives to,,

the petitioner and the fact that the said letter was issued during the pendency of CWP No.16214 of 2020. An explanation has been sought to be given,,

by the DRI as to why the said letter was issued and why subsequent to the passing of the order by this Court dated 12.11.2020 in the above said writ,,

petition the DRI has resumed the investigation. It has been stated that the investigation had been suspended on account of two judgments passed by,,

this Court and it was after the Hon'ble Supreme Court of India had granted ad interim stay on the operation of the said judgments, that the DRI had",,

resumed the investigation. It is further averred that the investigation conducted so far has revealed fraudulent availment of export incentives/benefits,,

of the petitioner to the tune of Rs.3.5 crores. It has been stated that the petitioner should not be permitted to take benefit of his own wrong.,,

Alternatively, and without prejudice to the main contention, it has been stated that 50% of the scrips may be permitted to be registered and utilised",,

subject to the terms and conditions laid down by this Court in other similar cases.,,

Learned counsel for the petitioner has vehemently argued that once the DRI had issued letter dated 22.10.2020 and on the said letter, the affidavit",,

dated 11.11.2020 was also submitted by the DGFT in the earlier round of litigation and the said writ petition was disposed of in view of the said,,

affidavit and the scrips in question had been issued in pursuance thereof, it did not lie in the mouth of the DRI or the custom authorities to oppose the",,

registration of the said scrips. It has further been argued that the act of the authorities would in fact amount to over-reaching the orders passed by this,,

Court and back-tracking from the affidavit submitted before this Court in the earlier round of litigation and therefore, would be contemptuous. It is also",,

stated that till date no show cause notice has been issued to the petitioner so as to call for cancellation of the scrips and as per settled law, once the",,

issuing authority has issued the scrip, then it was mandatory for the registering authority to have registered the same. Reliance in this regard has been",,

placed upon the judgment of the Hon'ble Supreme Court of India titled as Titan Medical Systems Pvt. Ltd. V. Collector of Customs, (2003) 9 SCC",,

133. It has further been argued that the investigation has been pending since 2019 and no statement has been made as to when the same is going to,,

end and thus, the non-registration of the duty credit scrips would cause great financial loss to the petitioner.",,

On the other hand, learned counsel for the respondents has also vehemently argued that the present case is a case in which the respondents has",,

indulged in over-valuation in their exports and has shown excessive purchase to misuse the facility of IGST refund. It has further been argued that the,,

petitioner in fact is not even cooperating with the investigation. Learned counsel for the respondents has tried to explain the resumption of the,,

investigation by relying upon the stay order passed by Hon'ble Supreme Court of India which had been granted against the judgments passed by this,, Court on account of which the investigation had been suspended. In the alternate, by placing reliance upon two orders of this Court, it has been argued",,

that only 50% of the scrips may be permitted to be registered and utilised subject to the terms and conditions laid by this Court in similar matters.,,

We have considered the submissions made by both the counsels Â of 11 and have perused the record.,,

It is the admitted case of the parties that after the DRI had searched the factory premises of the petitioner on 17.06.2019 and had issued an alert and,,

had also directed the DGFT and the other authorities not to grant/release the export benefits to the petitioner, the petitioner had approached this Court",,

by filing CWP No.16214 of 2020. It is also admitted between the parties that during the said proceedings a letter was issued by the DRI to the,,

Additional DGFT granting its no objection to the DGFT for releasing the export scrips. The DGFT inturn had submitted an affidavit in the said,,

proceedings clearly stating that the petitioner's name was withdrawn from the Denied Entity List (DEL) and that the scrips have already been issued,,

to the petitioner on 28.10.2020. They had further stated that the benefits already stand transferred to the petitioner. On the basis of the said affidavit,",,

the earlier writ petition had been rendered infructuous. The respondents did not choose to file application for review/recalling of the said order by,,

explaining the facts, which are now sought to be explained when the petitioner has filed the present writ petition. In our considered view, the said",,

approach of the respondents- authorities is not in accordance with law, inasmuch as, in case on the basis of certain factors, the respondents had the",,

understanding that they could have still denied the relief to the petitioner, then they should have moved an application in the first writ petition detailing",,

all the facts. However, the respondents- authorities have chosen to withdraw the benefit which, at one stage, had been conceded to by them in the",,

earlier writ petition. The said proceedings are binding on the petitioner as well as the respondents and thus, once the respondents-authorities had",,

chosen to issue the scrips then the non-registering of the same cannot be justified. The respondents cannot be permitted to back- track from the,,

affidavit dated 11.11.2020 filed in the earlier proceedings. Moreover, admittedly, till date no show cause notice has been issued by the proper officer",,

nor any proceeding under the Act is pending against the petitioner. The investigation by the DRI although is pending and continuing but there is no,, indication when the same would finally culminate. Moreover, the respondents-authorities have sufficient power to proceed against the petitioner, if any",,

amount is found due against them, even after the registration of the duty credit scrips. The turnover of the petitioner is substantial as is apparent from",,

the chart reproduced hereinabove and the chart has not been denied by the respondent-authorities. The Petitioner cannot be made to wait endlessly,,

for deriving benefit of the scrips issued to him. Thus, keeping in view the above-said facts, we are inclined to accept the prayer of the petitioner",,

subject to conditions. This Court had put to the learned counsel for the petitioner as to how much amount the petitioner is ready to deposit in addition to,,

the amount of Rs.50 lakhs already deposited, in order to protect the interest of the Revenue. Learned counsel for the petitioner has very fairly stated",,

that the petitioner is ready to deposit an amount of Rs.1 crore within a period of 30 days from today. The duty credit scrips issued in the present case,,

are for a value of Rs.3,25,43,947/- and since the petitioner has already deposited Rs.50 lakhs, thus, we find the offer of further deposit of Rs.1 crore to",,

be very just and fair, in the facts and circumstances of the present case. The orders relied upon by the learned counsel for the respondents were",,

passed on the basis of consensus. However, in the present case no such consensus has been reached. Thus, we deem it appropriate to dispose of this",,

writ petition by passing the following directions:-,,

i. The petitioner is directed to pay an amount of Rs.1 crore within a period of 30 days from today. The said amount would be over and above the,,

amount of Rs.50 lakhs, which the petitioner has already paid.",,

ii. The petitioner is also directed to provide security for the balance amount of the scrips i.e. Rs.1,75,43,947/-, by furnishing personal surety duly",,

supported by personal guarantees of two other persons within a period of 1 month from today.,,

iii. The respondents-authorities are directed to register the duty credit scrips in accordance with law, within a period of 15 days from the date the",,

direction under (i) and (ii) herein above are complied with by the petitioner.,,

Since the main case is disposed of, the pending Civil Miscellaneous Application(s), if any, also stands disposed of.",,

