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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP (C) No. 11606 of 2009

and

CM Nos. 11439-40 of 2009

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Decided on : September 11, 2009

M/s. Margra Industries Ltd.

. . . Petitioner

through :

Mr. Priyadarshi Manish with
Ms. Anjali Manish, Advocates

VERSUS

Union of India & Ors.

. . . Respondents

through :

Mr. Mukesh Anand with
Mr. R.C.S. Bhadoria, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. Rule D.B.

With the consent of learned counsel for the parties, we have heard the matter finally since the issue involved is in a very narrow campus.

2. In this petition, we are concerned with the impugned orders dated 3.8.2009 passed by the Commissioner of Customs (Appeal) {hereinafter referred to as the 'Appellate Authority'} on the stay application for waiver of pre-deposit and, therefore, it is not

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necessary to state the facts of the matter in detail. Suffice is to point out that the petitioner was issued the EPCG licence bearing No. 0103248 for the import of Capital Goods for the CIF value of Rs.11,22,043/- at the concessional rate of duty of 10% with the condition to make the export of antique of marble for the value of US\$ 105,480 within a period of five years from the date of issuance of the said licence. The petitioner had registered the licence with the Customs Department and furnished a bond for the total amount of duty foregone, i.e. Rs.3,45,435/-. He had also furnished bank guarantee in the sum of Rs.1,72,717/- and on that basis, on 20.1.1999, cleared the imported machinery for CIF value of Rs.11,17,590.25p. by paying concessional duty. According to the respondents, the petitioner could not fulfil the export obligation of making the export of antique of marble for a value of US\$ 105,480. For this reason, the petitioner was given show-cause notice dated 2.5.2008 to show-cause as to why the duty amounting to Rs.3,45,435/-, along with interest, should not be demanded and why a penalty should not be imposed upon the petitioner under Section 112 of the Indian Customs Act, 1962. The petitioner filed his reply and was heard.

3. Against this particular licence, the petitioner had not fulfilled the export obligation. However, the petitioner sought to club the export obligation with other licenses and submission was that such clubbing was allowed by the respondents in many other cases and on clubbing of the export obligation with other licenses as made by the

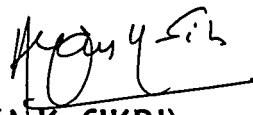
petitioner, it should be treated that the petitioner has fulfilled the export obligation in the instant case as well. He also submitted that decision in respect of clubbing sought by the petitioner was still awaited. However, the adjudicating authority did not accept this plea and passed the order in original dated 24.3.2009 confirming the demand of Rs.3,45,435/- and also imposed penalty of Rs.75,000/-0. Against this order, the petitioner has preferred appeal, which is pending before the Appellate Authority. Before the Appellate Authority, the petitioner also moved an application for waiver of pre-deposit. In this application the Appellate Authority has passed impugned orders dated 3.8.2009 directing the petitioner to make a deposit of Rs.2 lacs. Against this order the present petition is filed.

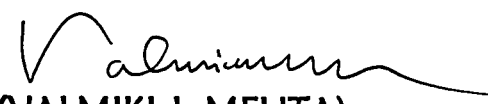
4. Learned counsel for the petitioner has advanced two submissions, namely:
 - (a) The petitioner had *prima facie* good case, which aspect is not dealt with by the Appellate Authority. In this behalf, submission was that the clubbing of the export obligation with some other advanced licenses, as sought by the petitioner, is to be allowed in all likelihood as has happened in many other cases. If that is accepted, then the petitioner cannot be treated in breach insofar as fulfilling the export obligation against the licenses in question is concerned.
 - (b) The bank guarantee submitted by the petitioner in the sum of Rs.1,72,717/- has already been invoked and, thus, the respondent has recovered the aforesaid amount from the petitioner, which aspect is glossed over by the respondents.

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5. Learned counsel for the respondents, on the other hand, argued that the petitioner could not produce EODC in spite of various opportunities granted and, therefore, for failing to fulfil the export obligation, the order in original is rightly passed.
 6. While the question as to whether the petitioner is to be given the benefit of clubbing of the export obligation or not is a matter to be considered at the appropriate stage and the Appellate Authority would also go into this aspect in detail, we find that at least *prima facie* case is made out by the petitioner in its waiver. That apart, even if we sustain the order of the Appellate Authority directing the petitioner to make a deposit of Rs.2 lacs, the petitioner is entitled to adjustment of the amount already received by the respondent by invoking the bank guarantee in the sum of Rs.1,72,717/-.
 7. In these circumstances, we dispose of this writ petition with a direction to the petitioner to deposit the balance amount of Rs.27,283/- (Rs.2,00,000 – Rs.1,72,717) within four weeks. The accompanying applications also stand disposed of.

Dasti.

- Roush CM 15157109 - Restoration & Delay
in compliance of order dt-
11.9.09


(A.K. SIKRI)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

September 11, 2009
nsk

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Present: Mr. Priyadarshi Manish with Ms. Anjali Manish for the applicant.
Mr. Mukesh Anand with Mr. R.C.S. Bhadoria for the respondent.

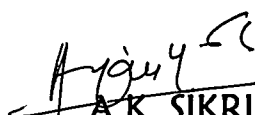
CM No. 15157/2009 in WP (C) No. 11606/2009

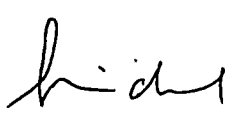
In the writ petition filed by the applicant, orders dated 15.9.2009 were passed sustaining the order of the appellate authority directing the petitioner to make a deposit of Rs.2 lacs. At the same time, it is also held that the petitioner shall be entitled to adjust a sum of Rs.1,72,717/- already received by the respondent by invoking the bank guarantee. In these circumstances, four weeks time was granted to the petitioner to deposit the balance amount of Rs.27,283/-. There had been some delay in depositing this amount because of which the appeal preferred by the petitioner has been dismissed by the Commissioner of Customs (Appeals).

In this application, the applicant/petitioner has stated the reasons which led to some delay in making the deposit of balance amount. Having regard to the explanation, we condone the delay in making the payment. As a consequence, order dated 15.9.2009 passed by the Commissioner of Customs (Appeals) dismissing the appeal for non-deposit

he aforesaid amount is also set aside. Matter is remitted back to the
Commissioner to the Commissioner of Customs (Appeals) to hear the
deal on merits.

This application is disposed of in the aforesaid terms.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

ember 03, 2009