HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.772 of 2009

ORDER:

This writ petition is filed with the following prayer:-

> " To issue a writ order or direction more particularly in the nature of writ of mandamus declaring the Notification dated 8 (RE 2006)
> 2004-2009, dated 12-06-2006, issued by the 2nd respondent ultra vires the Foreign Trade (Development and Regulation) Act, 1992 insofar as the Notification gives retrospective effect to amendment made to Foreign Trade Policy, 2004-09 and consequently declare that the petitioner is entitled to Duty Credit Entitlement Certificate for 2005-2006 under Target Plus Scheme of at 10% of the incremental growth of exports."

The impugned notification in the present writ petition was challenged before the High Court of Gujarat in Special Civil Application No.19753 of 2006 and Gujarat High Court through its order, dated 30-11-2006, declared the said notification as ultra vires, insofar as its retrospective effect is concerned and held that the petitioners are entitled to get duty and their entitlement as per para 3.7.3. of the Foreign Trade Policy, Target Plus Scheme, 2004-2009 and the same was upheld by Apex Court in **Director General of Foreign Trade and Another v. M/s.Kanak Exports and another**[1] in Civil Appeal No.554 of 2006 by holding as under:

> " Pertinently, it is also not denied that these petitioners/exporters had achieved the quantum/incremental growth, as stipulated in the TPS, which made them eligible to get the rewards under the said Scheme. These exporters, therefore, had fulfilled the conditions contained in the TPS. The Scheme was floated to accelerate quantum growth in exports and when those star export houses achieved the quantum growth in export, as stated in para 3.7.3., they would naturally become entitled to a particular percentage of duty credit entitlement depending upon the quantum of growth achieved. These exporters, thus, got vested right to avail the duty credit entitlement and achieve higher rate, i.e. 10% or 15%, as the case may be. Reducing the same to 5% would clearly amount to taking away their vested right with the issuing of the Notification and making them effective retrospectively.
>
> As a result, we hold that Notification No.48/2005, dated February 20, 2006 and Notification No.8/2006 dated June 12, 2006 cannot be applied retrospectively and they would be effective only from the dates they were issued.
>
> Writ Petition (Civil) No.27 of 2008, Transfer Case (Civil) Nos.32 and 33 of 2007 (which were the writ petitions filed by exporters before the High Court) are, thus, allowed in the aforesaid terms. The Transfer Case arising out of Transfer Petition (Civil) No.568 of 2014, which was the writ appeal filed by DGFT before

the High Court is dismissed thereby confirming the order of the Gujarat High Court allowing the writ petition filed by the exporter, namely, M/s.Welspun India Limited."

Since identical questions raised in this writ petition are answered by Gujarat High Court in favour of the petitioners, which are upheld by Apex Court, and the law laid down clearly applies to the facts in the present case, the same is not disputed by the learned counsel for the respondents.

In view of the same, the writ petition is allowed as prayed for and the respondents are directed to issue Duty Entitlement Certificate within a period of eight (08) weeks from the date of receipt of a copy of this order. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY,J

24-02-2016
nvl

[1] 2015 (326) ELT 26