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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6910/2008

AJAY INDUSTRIAL CORPORATION ..... Petitioner
Through: Mr. Rajesh Rawal, Advocate.

versus

UOI & ANR. ..... Respondents
Through: Mr. Vikram Jetley, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R
% **06.04.2016**

CM Appl. 12500/2016 in W.P.(C) 6910/2008

Present application has been filed for early hearing.

With consent of parties, the matter is taken up for hearing and disposal.

Accordingly, present application stands allowed.

W.P.(C) 6910/2008 & CM Appl. 13265/2008

Present writ petition has been filed challenging the retrospective effect of Notification No.08 (RE-2006)/2004-2009 dated 12th June, 2006 insofar as it reduces the entitlement of Duty Credit Entitlement from 10% to 5% w.e.f. 01st April, 2005.

On 13th July, 2010, this Court had recorded the statement of learned counsel for respondents that a similar issue is pending before the Supreme Court being Civil Appeal No.1589/2006 (***Adani Exports vs. Union of India***).

On 30th April, 2015, a similar submission of the learned counsel for petitioner was recorded. The order dated 30th April, 2015 is reproduced hereinbelow:-

> *" None appeared on behalf of the respondent despite service.*
>
> *Learned counsel for the petitioner submits that a similar issue is pending before the Hon'ble Supreme Court of India in* ***Adani Exports vs. Union of India*** *in Civil Appeal No.1589/2006.*
>
> *Renotify on 07.09.2015."*

Today, learned counsel for petitioner states that the Supreme Court has dismissed the Civil Appeals filed by the respondent-Director General of Foreign Trade. A copy of the judgment in a batch of matters in which Civil Appeal No.554/2006 was the lead matter has been handed over in Court. The same is taken on record. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"132) 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 exports, 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.*

xxx xxx xxx

134) 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."

In view thereof, it is directed that the Notification dated 12th June, 2006 has no retrospective effect insofar as it reduces the petitioner's entitlement of Duty Credit Entitlement from 10% to 5% w.e.f. 01st April, 2005.

With the aforesaid observation and direction, present writ petition and application are allowed and the matter is remanded back to the respondent No.2 for computation of the balance Duty Credit Entitlement payable to the petitioner. The matter is directed to be listed before the Director General of Foreign Trade on 25th April, 2016.

After giving an opportunity of hearing to the petitioner, the Director General of Foreign Trade is directed to dispose of the matter within a period of eight weeks.

MANMOHAN, J

APRIL 06, 2016
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