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

% Date of decision: 18.07.2016

\+ LPA 503/2009

TIMKEN INDIA LIMITED ..... Appellant

Through: Mr.A.N.Haksar, Sr. Advocate with Mr. Aditya Tiwari & Mr.Sahil Chopra, Advocates.

Versus

UNION OF INDIA AND ORS ..... Respondent

Through: Mr.Anil Soni, CGSC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present appeal is filed seeking to impugn the judgment of the learned Single Judge dated 11.08.2009 by which judgment the writ petition of the appellant was dismissed. The appellant filed the writ petition seeking an appropriate writ for quashing the impugned orders passed by respondents No.3/Zonal Director General of Foreign Trade, Department of Commerce dated 13.07.2006 and order dated 17.04.2007 passed by the Grievance Redressal Committee of respondent No.2 denying the benefits of Rs. 4.6 crores for the year 2004-2005 to the appellant under the Target Plus Scheme notified by respondent No. 1 under the Foreign Trade Policy. The appellant also sought to quash order dated 13.09.2006 passed by respondent No. 3 rejecting the application of the appellant for renewal of the Status Certificate

for year 2004-06 made by the appellant under the provisions of the Foreign Trade Policy 2004-2009.

2. The brief facts which led to filing of the writ petition are that the petitioner is stated to be engaged in the manufacture of Tapered Roller Bearings including components thereof at its plant at Jamshedpur, Jharkhand. The said Tapered Roller Bearings are manufactured out of imported and indigenously procured inputs. The appellant caters to both domestic and export markets.

3. In exercise of powers under Section 5 of the Foreign Trade (Development and Regulation Act), 1992, respondent No.1 notified the Policy of 2002 which came into effect from 01.04.2002. The appellant was a "Status Holder", having achieved prescribed level of export under the policy in force before the Policy of 2002. In terms of the provisions of para 3.7.4 of the said Policy of 2002, the validity of the Certificate of Recognition dated 15.02.2001 issued in favour of the appellant was extended from 31.03.2003 to 31.03.2004. As per para 3.2 of the Handbook, an application for renewal of status certificate had to be filed before 01.03.2005.

4. On 31.08.2004, a new Foreign Trade Policy 2004-2009 including the new Handbook was notified by respondent No.1 w.e.f. 01.09.2004. It is contended that the appellant's status as an Export House was automatically converted/elevated to a one Star Export House under the new Policy. The said Policy of 2004 introduced a new export promotion Scheme called "Target Plus Scheme" under para 3.7 of Chapter 3 of the Policy. The objective of the Scheme was to accelerate growth in exports by rewarding Star Export Houses who have achieved a quantum growth in exports. It is

averred that the eligibility criteria to avail benefits under the said Target Plus Scheme was to register a 20% incremental growth in export proceeds in the current year from the previous licensing year and to achieve a minimum export turnover in free foreign exchange of Rs. 10 crores. It is the contention of the appellant that it fulfilled this eligibility criterion as its export turnover increased from Rs.74 crores (2003-2004) to Rs.121 crores (2004-2005) which was more than 25% growth of export turnover than the previous financial year. As per para 3.2.5 of the Handbook to the new Policy, the last date for referring an application to avail the benefits under the Scheme was 31.12.2005 which stood extended upto 31.03.2006.

5. The appellant filed an application on 28.06.2006 claiming benefits under the Target Plus Scheme. However, respondent No.3 vide its letter dated 13.07.2006 rejected the application of the appellant stating that the appellant was not a Status Holder during the period 2004-2005 and hence, its case cannot be considered. It is averred that the appellant without prejudice to its contention that in terms of the Policy, was required to be and was a Status Holder on the date of making the application for such benefits, the appellant on 24.08.2006 filed an application before respondent No.3 seeking extension/renewal of his Status Certificate for the years 2004-2006 and condonation of delay for referring the said application. By its order dated 13.09.2006, respondent No.3 rejected the said application of the appellant on the ground that the request for renewal of Status Certificate was not made within the stipulated period.

6. The appellant thereafter filed a representation before respondent No.2 praying for a direction to respondent No.3 to issue the requisite renewal of Status Certificates for the period 01.04.2004 to 31.03.2006 based upon the

export performance of the appellant and to condone the delay which has occurred. The Grievance Redressal Committee of respondent No.2 however passed an order on 17.04.2007 rejecting the representation of the appellant.

7. The learned Single Judge by the impugned judgment dated 11.08.2009 noted that as per the Handbook, the appellant was required to apply for the Status Certificate on or before 31.03.2005 and 31.03.2006. No such application was made by the appellant. The order further holds that as the appellant was not a Star Export House as defined in the Exim Policy for the period 2002-2007 for the relevant period i.e. 31.03.2005 and 31.03.2006 inasmuch as it was not registered or recognized as a Star Export House in terms of paragraph 3.7.2.1 of the Exim Policy, the appellant was not entitled to the benefits of the Target Plus Scheme and this position would not change merely because the appellant as an exporter had achieved the requisite export target. It was a mandatory requirement of the Scheme that the exporter should be recognized and registered as a Star Export House during the relevant period. The impugned order also noted that the policy does not contain any provision for extension of time for accepting applications for grant of Status Certificates/Star House Certificate in case of delay in filing and hence, the time limit stipulated in the policy had to be adhered to. The impugned order further notes that the explanation given by the appellant to request for condonation of delay in making the application was entirely vague and lacked substance and does not merit acceptance. The order held that even if it is presumed that the delay in filing of the application for the issue of Star House Certificate can be condoned, there was no justifiable reason to condone any such delay. The delay being for two financial years

was held to be substantial and the writ petition was accordingly dismissed. Hence, the present appeal.

8. We have heard the learned senior counsel for the appellant and the learned counsel for the respondent and gone through the records. Both the parties have filed written submissions which we have perused.

9. Learned senior counsel for the appellant has strenuously urged that the appellant fulfilled the necessary criteria of exports necessary for awarding title of Star Export House and the Status holder certificate. It is submitted that the rejection of the application of the appellant on a procedural requirement of filing the application before a particular date was incorrect inasmuch as the requirement was a mere formality. Reliance is placed on ***Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner, AIR 1992 SC 152***. It has further been urged that the eligibility criteria for the "Target Plus Scheme" as stated in paragraph 3.7.2 does not specify that the person who wants to avail the benefit of the Target Plus Scheme has to be a Star Export House in the previous licensing year. It has been urged that the application of the appellant has wrongly been rejected, inasmuch as the appellant was a recognized Export House on the date of filing the application for getting benefits under "Target Plus Scheme".

10. As per the Policy of 2002, the Status Certificates which expired on 31.03.2003 were deemed to have been extended up to 31.03.2004. The said para 3.7.4 of the Scheme reads as follows:-

> "3.7.4 The status certificates expired/expiring on 31st March, 2002/ 31st March, 2003 along with the erstwhile Golden Status Certificates shall be deemed to have been extended upto 31st

March, 2004. However, further renewal shall be granted on achieving the threshold limit prescribed in the policy."

11. Para 3.2 of the policy provides that for grant of any status, the application has to be filed before first of March. The said para 3.2 reads as follows:-

> "3.2 For grant of any status, the application shall be filed before 1st March. The application for Export House, Trading House, Star Trading House and Super Star Trading House shall be filed in Appendix-17. The application for Export House, Trading House, Star Trading House and Super Star Trading House for service providers shall be filed in Appendix-17A."

12. The new Foreign Trade Policy 2004-2009 introduced the Target Plus Scheme. The Scheme was elaborated in para 3.7 relevant portion of which reads as follows:

	"3.7	**TARGET PLUS SCHEME**
Objective	3.7.1	The objective of the scheme is to accelerate growth in exports by rewarding Star Export House who have achieved a quantum growth in exports. High performing Star Export House shall be entitled for a duty credit based on incremental exports, substantially higher than the general annual export target fixed (Since the target fixed for 2005-06 is 17%, the lower limit of performance for qualifying for rewards is pegged at 20% for the current year).
Eligibility Criteria	3.7.2	All Star Export Houses (including Status Holders as defined in Para 3.7.2.1 of Exim Policy 2002-07) which have achieved a minimum export turnover in free foreign exchange of Rs.10 crores in the previous licensing year are eligible for consideration under the Target Plus Scheme.

Entitlement 3.7.3 The entitlement under this scheme would be contingent on the percentage incremental growth in FOB value of exports in the current licensing year over the previous licensing year, as under

Percentage incremental growth	Duty Credit Entitlement (as a % of the incremental growth)
20% and above but below 25%	5%
25% or above but below 100%	10%
100% and above	15% (of 100%)

13. Clearly, the Scheme was applicable to Star Export Houses including Status Holder as defined in para 3.7.2.1 of Exim Policy of 2002- 2007, who have achieved export turnover in free foreign exchange of Rs.10 crores in the previous licensing year apart from incremental growth as stated. Similarly paras 3.5.1 and 3.5.2 read as follows:-

"***Star Export House*** 3.5.1 Merchant as well as Manufacturer Exporters. Service Providers, Export Oriented Units (EOUs) and Units located in Special Economic Zones (SEZs), Agri Export Zone (AEZ's), Electronic Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio Technology Parks (BTPs) shall be eligible for applying for status as Star Export

Houses.

Status Category	3.5.2	The applicant shall be categorized depending on his total FOB/FOR export performance during the current plus the previous three years:

Category	Performance (Rupees in Crores)
One Star Export House	15
Two Star Export House	100
Three Star Export House	500
Four Star Export House	1500
Five Star Export House	5000

14. On the issue of renewal of the Status Certificate, reference may be had to the Clause 3.7.3 of the Policy of 2002 which reads as follows:

> "3.7.3 All status certificates issued or renewed on or after 1.4.2002 shall be valid from 1st April of the licensing year during which the application for the grant of such recognition is made upto 31st March, 2007, unless otherwise specified. On the expiry of such certificate, application for renewal of status certificate shall be required to be made within a period as prescribed in the Handbook (Vol.I). During the said period, the status holder shall be eligible to claim the usual facilities and benefits."

15. Similarly, reference may also be had to the Clause 3.5.3 of the Policies of 2004 which reads as follows:

> "3.7.3 All status certificates issued or renewed on or after 01.09.2002 shall be valid from 1st April of the licensing year during which the application for

the grant of such recognition is made upto 31st March, 2009, unless otherwise specified.

On the expiry of such certificate, application for renewal of status certificate shall be required to be made within a period as prescribed in the Handbook (Vol.I). During the said period, the star export house shall be eligible to claim the usual facilities and benefits."

16. It would follow that making the application for categorizing the status of the appellant was mandatory before the appellant could take the benefit of the Target Plus Scheme. Mere fulfillment of the percentage incremental growth *per se* without registration as a Star Export House/Status Holder would not entitle the appellant to the necessary benefits under the Scheme. This would clearly follow from paragraph 3.7.3 of the Policy of 2002 which prescribes for filing an application for renewal of Status Certificate on expiry of the Certificate. It also follows from paragraph 3.5.3 of the Policy of 2004 which provides that on the expiry of Status Certificate, an application for renewal shall be required to be made within prescribed period. The eligibility criteria of the "Target Plus Scheme" as stated in paragraph 3.7.2 of the Policy of 2004 also clearly provides that only Export Houses including Status Holder can take benefit of the Scheme.

17. Admittedly, in the present case the appellant has made a belated application much beyond the period stipulated for recognition as an Export House/Status Holder. The last date for making the application was 31.03.2005, yet the application was made on 24.08.2006. The reasons for the delay as stated in the said application were stated as follows:-

> "While the Company's Certificate of Registration dated 15th February 2001 was to expire on 31st March 2004 (by virtue of the deemed extension vide Notification No. 3/2002-07 dated 1st May 2002) thus allowing the Company to seek renewal/grant of fresh certificate by 1st March 2005, however due to oversight the required application was not filed within time i.e. by 1st March, 2005. The Company however is filing the necessary application herewith which contains the aforesaid export figures duly certified by a Chartered Accountant. The aforesaid application is annexed hereto.
>
> It may be noted that during the intervening period i.e. between 1st April 2004 till before 31st March 2005 the Company was deemed as an 'Export House' and as mentioned above continued to make substantial exports in excess of the export values necessary for renewal/grant of status certificate under the EXIM Policy 2002-07."

18. It clearly follows that the time period for seeking registration as a Star Export House/Status Holder from 01.04.2004 to 31.03.2006 had expired long back. The application has been filed belatedly giving vague reasons for the delay. Learned senior counsel for the appellant has failed to point out any provisions in the policy which permit condonation of delay in making the application for recognition of a Star Export House/Status Holder. In the absence of any such provision in the Scheme, it would not be possible to accept the contentions of the appellant that the respondents were bound to treat the delay in filing the application as a delay in fulfilling a routine

procedural formality and bound to condone the delay in making the application. Any such interpretation would lead to complete chaos as beneficiaries of the Scheme would be able to file their applications as and when they please without adherence to any time frame.

19. The reliance of the learned senior counsel for the appellant on the judgment of the Supreme Court in the case of ***Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner*** (supra) is misplaced. That was a case in which notification related to package of relief and incentive including relief from payment of sale tax. What emerged from the facts was that that the appellant in that case was entitled to the benefit of the relief in the respective years. It had done and carried out all that it was necessary for it to do. The grant of permission remained on account of certain outstanding inter departmental issues. It was in these facts, the Supreme Court held that the appellant had nothing to do with the issues on account of which the permission has been withheld. The court further held as follows:

> "11……………………There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

20. It was in those facts that the court allowed the appeal holding that there are no circumstances to justify the refusal of the permission. The judgment would not apply in the facts of the present case inasmuch as policy specifically requires that the application for renewal has to be made.

21. The next submission of the appellant namely that the appellant was a recognized Export House on the date of filing the application for getting

benefits under "Target Plus Scheme" is again a misplaced argument. The admitted fact is that the application was made for seeking incentive for the period 2004-2006, the period for which certificate of the appellant had expired. Merely because on that date the appellant was a recognized Export House for the subsequent period after 2004-2006 would not make any difference or help the appeal.

22. We agree with the views of the learned Single Judge. There are no reasons to interfere in the impugned order. The present appeal is dismissed.

JAYANT NATH
JUDGE

CHIEF JUSTICE

JULY 18, 2016/rb/v