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

\+　**LPA 363/2016 & CM No. 21426/2016**

Pronounced on: 08th November,2016

ROTOMAC ELECTRICALS LTD. ..... Appellant

Through : Mr.Bishwajit Bhattacharya, Sr.Adv. with Mr.Chandrachur Bhattacharya, Adv.

versus

UNION OF INDIA & ANR. ..... Respondents

Through : Mr. Sanjeev Narula and Ms. Vinita, Advocates.

CORAM
HON'BLE THE CHIEF JUSTICE
HON'BLE MS.JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

: **MS. G. ROHINI, CHIEF JUSTICE**

1. This appeal is preferred against the order of the learned Single Judge dated 18.05.2016 in W.P.(C) No.8417/2015. The unsuccessful petitioner is the appellant before us.

2. We have heard the learned counsel for both the parties.

3. As could be seen from the material available on record, the appellant/writ petitioner was granted an advance licence dated 22.12.1999 under Duty Exemption Scheme under the Foreign Trade (Development and Regulation) Act, 1992 (for short 'FTDR Act'). As per the conditions of the licence, the appellant was required to complete the export obligation of Rs.1,07,58,600/- as Free On Board (FOB) value within a period of 18

months from the date of the issue of advance licence. The licence also contained a specific clause that the licensee shall furnish the prescribed original documents along with the Duty Entitlement Exemption Certificate (DEEC) books having details of imports and exports duly authenticated by the Customs within two months of export obligation period to the Director General of Foreign Trade (DGFT). Admittedly, the period of fulfilling the export obligation expired on 21.06.2001. Alleging that the petitioner failed to furnish the relevant documents in proof of fulfilment of export obligation under the advance licence, DGFT issued notice dated 31.04.2004 calling upon the petitioner to furnish the documents specified therein within 15 days, failing which to show cause within 15 days as to why action should not be taken treating the petitioner as 100% defaulter in the fulfilment of export obligation followed by a similar show cause notices dated 19.05.2004 and 16.12.2004. The petitioner claims to have submitted its replies.

4. The respondent No.2 passed an order on 05.04.2010 holding that the licence had been mis-utilized and that the appellant had violated the provisions of the FTDR Act and imposing penalty of Rs.3,46,30,500/- on the petitioner and the Directors in exercise of powers conferred under Section 11(2) read with Section 11(4) of FTDR Act, 1992. The statutory appeal preferred by the appellant under Section 15 of the FTDR Act was dismissed by the respondent No.1 by order dated 05.01.2015. The statutory review petition was also dismissed by order dated 21/24.08.2015. Aggrieved by the same, the appellant filed W.P.(C) No.8417/2015 and the same was dismissed by the learned Single Judge by the order under appeal dated 18.05.2016. Hence, the present appeal.

5. It is contended by Sh.Bishwajeet Bhattacharya, the learned Senior Counsel appearing for the appellant that the learned Single Judge failed to appreciate the fact that the appellant/writ petitioner had produced all the relevant documents to establish fulfilment of export obligation. Placing much reliance upon clause 4.12 of the Handbook of Procedures providing for "exports in anticipation of licence", it is vehemently contended by the learned Senior Counsel that the conclusion of the learned Single Judge that the exports effected by the appellant/writ petitioner prior to the date of issuance of advance licence cannot be considered in fulfilment of export obligation is erroneous. It is submitted by the learned Senior Counsel that in the light of clause 4.12, the respondent Nos.1 & 2 should have held the export obligation was fulfilled on the basis of the exports took place on 16.02.1999, 29.01.1999 and 20.04.1999.

6. Though the order of the respondent No.2 was not supported by sufficient reasons, we have observed that the respondent No.1, i.e., the appellant authority while disposing of the statutory appeal passed a well-reasoned order after considering all the contentions advanced on behalf of the appellant. Having given sufficient opportunity to the appellant to produce the documents to establish the fulfilment of export obligation, the appeal was dismissed by the respondent No.1 by order dated 05.01.2015. The relevant paras of the said order may be reproduced for ready reference:

> "4. Thereafter, final personal hearing was granted on 27.08.2014 with directions to produce requisite documents to substantiate fulfillment of export obligation failing which case will be decided based on records available. Shri Satabdi Chakravarty, Sr. Accountants Officer appeared and again requested for one week's time to submit documents. A letter dated 03.09.2014 was received

enclosing therewith photocopies of Advance Licence, DEEC Book import/export, copies of BRC and Shipping Bills. However, the appellant was informed vide letter dated 31.10.2014 that these documents could not be accepted for fulfilment of export obligation against Advance Licence No.0131276 dated 22.12.1999. The following were the deficiencies in documents submitted by you:-

i. Part-2 of DEEC Book not logged and endorsed by Customs.
ii. EP copy of Shipping Bill does not show File No./Authorisation No. Therefore, these cannot be accepted towards fulfillment of export obligation.
iii. MODVAT non-availment certificate from Central Excise not submitted. Copy of Form A.R.4, S.No.3(a) states that goods have been manufactured availing facility of MODVAT Credit.
iv. Only copy of BRC submitted at CLA, New Delhi. Original BRC not submitted at CLA, New Delhi or produced before Appellant Authority.

5. They were advised to make any additional written submission, if any, within 15 days, later extended upto 10.12.2014. On 10.12.2014, Shri Satabdi Chakravarty, Sr.Accounts Officer met me to defend his case. He was informed that the 'free' shipping bill could not be accepted towards discharge of export obligation against advance licence. Further, the AR-4 shows that they have obtained Modal facility. He requested for some more time. Accordingly, additional time till 15^{th} December, 2014 was granted to make fresh submission. A letter dated 02.01.2015 has been received informing that they have obtained Modvat non-available certificate from Customs and Central Excise. But the other basic document like Shipping Bills endorsed by Customs were not submitted.

6. I have examined the documents and gone through the facts of the case. The appellant was granted various opportunities of personal hearing as detailed in above paras to produce requisite evidence of fulfilment of export obligation but the appellant has failed to do so. From the documents (only photocopies) submitted by the firm with their letter dated 03.09.2014 and also with their

appeal, it is observed that Part-2 of DEEC Book has been not logged by Customs. They have not been able to produce shipping bills showing authorization No/File No. Further, it is observed that appellant has not produced Duplicate/Bank Certificate copy of BRC. They were repeatedly advised to provide the documents required as per Policy/Procedure but they failed to do so. From the above, it is clear that the appellant did not have the requisite documents required to prove that they have fulfilled export obligation in respect of advance licence No.0131276 dated 22.12.1999."

7. As rightly held by the learned Single Judge, such finding of fact recorded by the statutory authorities regarding the failure of the appellant to furnish the documents to establish the fulfilment of the export obligation warrants no interference by this Court in exercise of the writ jurisdiction under Article 226 of the Constitution of India. We have observed that the dispute was not with regard to the interpretation of clause 4.12 as to whether the exports that had taken place even before the grant of advance licence can be considered or not, but the issue was whether the appellant could produce authenticated documents to prove the fulfilment of export obligation as required under the terms and conditions of the advance licence. A categorical finding was recorded by the respondent Nos.1 & 2 that the appellant/writ petitioner failed to produce. Therefore, the respondents cannot be said to have committed any error in imposing the penalty in exercise of the powers conferred by Section 11(2) of FTDR Act, 1992.

8. We do not find any substance even in the contention that the show cause notices being silent about the proposed levy of penalty, it is not open to the respondents to invoke Section 11(2) of FTDR Act, 1992. On a perusal of the show cause notices, we found that the petitioner was put on notice that it failed to submit the documents to prove the fulfilment of export

obligation. It is also relevant to note that the show cause notice dated 01.12.2009 was in fact issued under Section 14 of the FTDR Act proposing to take action under Section 11(2) for non-fulfilment of export obligation against the advance licence dated 22.12.1999. Hence, the allegation that the show cause notices were silent about the action proposed has no factual basis. Therefore, the decisions cited on behalf of the appellant, i.e., ***Commissioner of Customs, Mumbai vs. Toyo Engineering India Ltd.*** **(2006) 7 SCC 592**; ***Commissioner of Central Excise, Nagpur vs. Ballarpur Industries ltd.*** **(2007) 8 SCC 89** and ***Commissioner of Central Excise vs. Gas Authority of India Limited*** **(2007) 15 SCC 91** are not relevant for adjudicating the case on hand.

9. The contention that the Directors of the appellant company should not have been made liable also deserves no consideration since none of the Directors approached this Court.

10. For the aforesaid reasons, the appeal is devoid of merit and the same is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

NOVEMBER 08, 2016
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