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

\+ W.P.(C) No. 6871/2012 & CM No.17887/2012 (for stay).

RS BUILDERS & ENINGEERS LTD ..... Petitioner

Through: Mr. Ankur Sood and Mr. Jaiveer Shergill, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Jasmeet Singh, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **21.01.2016**

1. The petition impugns the order dated 27th August, 2012 of the respondent no.2 Additional Director General of Foreign Trade, acting in exercise of powers under Section 15 read with Section 13 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR) Act dismissing the appeal preferred by the petitioner against the adjudication order dated 6th May, 2010 of the respondent no.3 Deputy Director General of Foreign Trade, acting in exercise of powers under Section 14, for action under Section 11(2) of the FTDR Act, imposing a penalty of Rs.28,33,00,000/- on the petitioner for non-fulfilment of export obligation.

2. The petition came up first before this Court on 2nd November, 2012 when on the contention of the counsel for the petitioner that the order of the adjudicating officer and appeal whereagainst had been dismissed vide impugned order dated 27th August, 2012 was/is contrary to the judgment of the Division Bench of this Court in ***Dencap Electronics (P) Ltd. Vs. Additional Director General of Foreign Trade*** 2006 (194) ELT 389 and

finding that the adjudication proceedings were commenced after 16 years from the date when the export obligation was to be fulfilled, notice of the petition was issued and operation of the impugned order stayed.

3. The respondents have filed a counter affidavit as well as affidavit/status report on the aspect of delay as directed by this Court.

4. The counsels have been heard.

5. The export obligation which the petitioner is alleged to have not fulfilled was a term of the License dated 17th June, 1993 granted to the petitioner. On enquiry, the counsel for the petitioner states that the period for fulfilment of export obligation was 12 months from the date of the license as provided in para 63 of the Export and Import Policy (Import Export Handbook) for the year 1st April, 1992 to 31st March, 1997.

6. As per the respondents, during the audit of the respondents, Audit Memo dated 1st May, 1999 was prepared noting that the petitioner had not fulfilled the export obligation as no documents evidencing fulfilment of export obligation were found in the file of the Licensing Office. However notwithstanding the same, the respondents claim to have issued the first show cause notice to the petitioner on 13th October, 2009 i.e. after more than 10 years from the Audit Memo aforesaid.

7. According to the petitioner, no show cause notice was served on it and the order of the adjudicating officer was an *ex parte* one.

8. According to the respondents, repeated efforts were made for service of show cause notices at all the available addresses of the petitioner but all returned unserved/undelivered.

9. However the adjudication order dated 6th May, 2010 levying penalty as aforesaid on the petitioner was served on the petitioner and whereupon the petitioner filed the statutory appeal aforesaid which was dismissed.

10. It is the contention of the petitioner that the impugned orders are required to be set aside on the ground of delay alone. It is contended that even as per the para 130 of the Import Export Handbook for the relevant year, the petitioner was required to maintain a true and proper account of license-wise consumption and utilisation of imported goods only for a period of three years from the date of redemption which is stated to be the date of the licence and the petitioner at the appellate stage i.e. after 15-16 years from the date of grant of the licence, could not be expected to retain the records and hence was unable to produce any records before the Appellate Authority of having fulfilled the export obligation as is the stand of the petitioner.

11. The respondents in the affidavits filed in response to the specific directions of this Court to explain the delay have fairly admitted that there is no explanation for the delay at least from the date aforesaid of the Audit Memo i.e. 1st May, 1999 and all the officers dealing with the file have also retired and thus no reason can be attributed. It is however the stand of the respondents that letters dated 10th October, 2001 and 2nd May, 2002 were sent to the petitioner.

12. Though there is no limitation provided for initiating action for non-fulfilment of export obligation but I concur with the view expressed in the earlier orders in this petition that the action on the part of the respondents in this regard has to be within a reasonable time and the respondents cannot

wake up at any time to demand documents/proof of fulfilment of export obligation and penalise the importer therefor, especially when the respondents themselves have prescribed the period for which the importers are required to retain their records and the action is initiated after long lapse of time therefrom.

13. In this light of the matter, need is not felt to consider the other contention of the counsel for the petitioner, that for non-fulfilment of export obligation, action of imposition of penalty under Section 11(2) cannot be taken.

14. The petition therefore succeeds. The orders aforesaid of imposition of penalty on the petitioner are quashed.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 21, 2016
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