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

\+ **W.P.(C) 1378/2015**

COOPER PHARMA ..... Petitioner

Through: Ms. Prabhjyot K. Chadha and Mr. D. S. Chadha, Advocates.

Versus

D G F T & ANR. .....Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC, Mr. T.P. Singh and Mr. Manuj Kaushik, Advocates for Respondent No.1/UOI.
Mr. Sanjeev Narula, Senior Standing Counsel and Mr. Abhishek Ghai, Advocate for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 07.12.2016

1. The petitioner's grievance in this proceeding under Article 226 of the Constitution of India is the denial of refund and the eventual denial of the benefit of a Public Notice dated 12.08.2013 issued by the Ministry of Commerce and Industry, Department of Commerce, Central Government, under para 2.4 of the Foreign Trade Policy, 2009-14. The Public Notice reads as follows:-

> *"a) All pending cases of the default in meeting Export Obligation (EO) can be regularised by the authorisation holder on payment of applicable customs duty, corresponding to the shortfall in export obligation, along with interest on such customs duty; but the interest*

component to be so paid shall not exceed the amount of customs duty payable for this default.

[Here is an example: Suppose the default in EO is 100%, this would mean the complete duty saved amount has to be refunded. The interest on this duty saved amount has to be calculated from the date of import till the date of payment. The interest component under this dispensation would be limited to the duty saved amount. If the duty saved amount were Rs. 150, then the interest component would be limited to Rs. 150 and therefore for regularising this case the maximum amount to be paid by the authorisation holder would be Rs.300. However, for the same duty saved amount of Rs.150, if the default in EO were 30%, then the corresponding duty saved amount becomes Rs. 45 (30% of Rs. 150). Hence the interest component will be limited to Rs 45. Thus, duty + interest viii not exceed Rs. 90 for this regularisation of 30% default in EO for a duty saved amount of Rs. 150.]

(b) In line with the existing policy the customs duty could be paid either in cash or by way of debiting bf any valid duty credit scrips issued under Chapter 3 of the Foreign Trade Policy. The interest component however, has to be paid in cash only.

(c) Any authorisation holder choosing to avail this benefit must complete the process of payment on or before 31st March 2014."

2. The petitioner had applied and was granted an advance license on 21.01.1994 under which it exported goods sometime later i.e. on 27.09.1994. It was subsequently issued with show-cause notice as to why the advance license should not be cancelled. The show-cause notice was replied to and

later the petitioner applied for revalidation of license. Eventually, after series of correspondences, the petitioner applied for clubbing of the redemption of foreign based advance license with other advance licenses issued to it. This request was again made on 03.06.2008. On 31.01.2012, the respondent asked the petitioner to submit the DEEC books for verification of manual entries and issued a non-utilization certificate, which was considered on 14.09.2008.

3. On 30.06.2011, the process of adjudication was completed and the petitioner was imposed fiscal penalty of Rs.l,62,99,360/- for non-fulfillment of its export obligation. The petitioner appealed; this resulted in setting aside of the order in original and a remand by the Appellate Authority. Whilst the matter was pending, on 27.11.2013, the DGFT issued a letter asking the petitioner to get its policy advance authorization dated 21.01.1994 regularized in terms of the Public Notice. In terms of this letter, an application for relief was made on 07.03.2014. The petitioner's request pursuant to the Public Notice made through its application dated 07.03.2014 has remained unattended. It is contended that the petitioner has so far paid the entire customs duty applicable and the sums in excess of hundred per cent of the interest payable and consequently, the limited relief, available to it under the Public Notice in question, should be given.

4. Counsel for the respondent submits that the question of the petitioner's availing the benefit does not arise since the matter was concluded one and that it is only fresh or live cases that the benefit of regularization and refund can arise.

5. The terms of the Public Notice are clear that the verification i.e. any authorization holder choosing to avail the benefit should complete the process of payment on or before 31.03.2014. The policy is applicable to "all pending cases" of the default in meeting export obligations. This Court is of the opinion that the respondent's stand that the petitioner was ineligible to the benefit, is untenable; that the remand by the Appellate Authority to the Adjudicating Authority, it cannot be said that the matter remained concluded. Till date, the Adjudicating Authority has not passed any fresh orders and in that since the matter is "pending" or live. The petitioner fulfilled the requirement of the Public Notice and applied on 07.03.2014 i.e. well before the cut off date of 31.03.2014. In the circumstances, the respondents are hereby directed to verify the petitioner's application and pass the necessary orders after satisfying themselves as to other conditions of eligibility, with respect to the regularization of the default in EOU and as to its entitlement for consequential refund in terms of the Public Notice dated 12.08.2013.

6. The writ petition is allowed in the above terms.

7. No costs.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

DECEMBER 07, 2016
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