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

+ **W.P.(C) 7823/2016**

rites ltd

..... Petitioner

Through: Mr Sameer Nandwani & Mr Shiv
Gupta, Advocates.

versus

THE ADDITIONAL DIRECTOR GENERAL
OF FOREIGN TRADE

..... Respondent

Through: Mr Vikram Jetly, CGSC for UOI.

WITH

+ **W.P.(C) 7855/2016**

rites ltd.

..... Petitioner

Through: Mr Sameer Nandwani & Mr Shiv
Gupta, Advocates.

versus

THE ADDITIONAL DIRECTOR GENERAL
OF FOREIGN TRADE

..... Respondent

Through: Mr Vikram Jetly, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.09.2017

VIBHU BAKHRU, J

1. The petitioner (hereafter 'rites') has filed the present petition, *inter alia*, impugning two separate orders dated 05.04.2010 (hereafter 'the impugned orders') passed by the respondent (hereafter 'DGFT') imposing penalty on rites for defaulting in fulfilment of its export obligations.

rites was issued advance licence no. 0510030107 dated 05.01.2001 for ₹2,91,540/- and advance licence no. 0510031478 dated 05.02.2001 for ₹2,67,245/-. The licences were subject to export obligations of US\$ 53484 (FOB value basis) and US\$ 24294 (FOB value basis) respectively.

2. Admittedly, RITES neither surrendered the licence nor completed the export obligations. In the circumstances, DGFT issued two show cause notices (both dated 15.02.2008) calling upon RITES to furnish the requisite documents pertaining to the respective advance licences.

3. RITES replied to the aforesaid notices by letters dated 07.04.2008, *inter alia*, stating that the advance licences had not been used and were misplaced. RITES further requested the DGFT to close the files. By letters dated 01.01.2010, the DGFT responded to the aforesaid reply and called upon RITES to furnish the utilisation report from the custom authorities within a period of 15 days. However, RITES did not respond to the said letters.

4. Thereafter, the DGFT sent letters dated 11.02.2010 once again calling upon RITES to submit the utilisation report from the relevant custom authorities within a period of 15 days, failing which the case would be adjudicated and fiscal penalty would be imposed on RITES. RITES did not respond to the said notice as well. It appears that RITES responded to the said notice on 19.08.2013; that is, after the impugned orders had been passed.

5. Since no satisfactory response was received from RITES, the DGFT, passed the impugned orders dated 05.04.2010 imposing penalty of

₹13,36,225/- and ₹14,57,700/- respectively.

6. Copies of the said impugned orders were sent to RITES as well as its Directors.

7. According to RITES, it did not receive the said impugned orders as they were sent to its erstwhile office address at New Delhi and RITES had since shifted to Gurgaon. RITES further claimed that it became aware of the impugned orders on 28.04.2015. Even thereafter, RITES did not take any further steps to assail the impugned orders. On the contrary, RITES paid the penalties and requested for closure of the case by the letters dated 13.07.2015.

8. The RITES has filed the present petitions on 01.09.2016; that is, more than one and a half years after RITES had become aware of the impugned orders and more than a year after the DGFT had closed the cases. It is also relevant to note that the files were closed at the request of RITES and in RITES paying the penalties without any reservation.

9. Concededly, RITES had an alternate remedy to file an appeal against the impugned orders within a period of 45 days receiving the orders in terms of Section 15 of the Foreign Trade (Development & Regulation) Act, 1992. However, RITES did not avail of the statutory remedies.

10. It is apparent from the above that present petitions are grossly delayed and have been filed to overcome the failure of not availing of the alternate remedies within the time specified.

11. In *A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani: (1988) 1 SCC 401*, the Supreme Court has observed as under:

“If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion in his favour.”

12. In *State of Madhya Pradesh v. Bhailal Bhai: AIR 1964 SC 1006*, the Supreme Court has observed as under:

"Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

13. The impugned orders were passed more than six years prior to the filing of the present petitions. RITES had adequate notice of the proceedings initiated by the DGFT and was also forewarned that if it did not provide the documents as called for by the DGFT, within a period of 15 days from the communication dated 20.02.2010, fiscal penalty would be imposed on RITES. RITES neither responded to the said communication nor participated in the proceedings despite being aware of the same. The learned

counsel for the respondents also pointed out that the impugned orders were sent to all directors of RITES. Thus, even if RITES did not receive the impugned orders at its office address, its Directors had, undisputedly, received the same.

14. However, RITES did not institute any proceedings to challenge the impugned orders. More importantly, on becoming aware of the impugned orders, RITES paid the penalties and requested for closure of the cases. The payments made by RITES were not under protest or with any reservation. The communications issued by RITES also do not indicate that such deposit was made without prejudice to its rights. The files were finally closed and the matter was concluded in July 2015.

15. The learned counsel for RITES submits that penalty was paid under duress as the DGFT had refused to accept the penalty under protest. This Court is not persuaded to accept the aforesaid contention. RITES is Government of India Enterprise and not a hapless individual, who can be taken advantage of; it cannot be heard to canvas that it had made payments under duress. Further, even after the cases were closed, RITES did not take immediate steps to challenge the impugned orders and had approached this Court more than a year thereafter.

16. In this view, this Court does not find that any interference is warranted in these proceedings under Article 226 of the Constitution of India. The impugned orders are neither arbitrary nor unreasonable. Further, having failed to exercise the alternate remedy within the time prescribed, RITES cannot be permitted to circumvent the statutory procedure by filing

petitions under Article 226 of the Constitution of India.

17. There is no plausible justification of the delay in assailing the impugned orders.

18. The petition is, accordingly, dismissed.

SEPTEMBER 15, 2017
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VIBHU BAKHRU, J

