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

\+ **W.P.(C) 9723/2016**

M/S SIMBHAOLI SUGARS LTD AND ANR ..... Petitioners

Through: Mr Somnath Shukla, Ms Ashwini Chandrasekharan, Advocates.

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr Akshay Makhija, CGSC with Ms Divyya Kapur, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **28.11.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 08.03.2016 passed by respondent no.3 (Policy Relaxation Committee - hereafter 'PRC') and an order dated 22.09.2015 passed by respondent no. 2 (hereafter 'DGFT'). By the aforesaid orders, the petitioner's applications for extension of time to complete its export obligations were rejected.

2. It is the petitioner's case that it was unable to complete the export obligations for reasons beyond its control. The petitioner claims that in view of the orders passed by Hon'ble Allahabad High Court in a Public Interest Litigation (PIL) bearing PIL No. 29523 of 2014 captioned *Kisan Mazdoor Sangathan v. State of Uttar Pradesh & Ors.*, the stocks of white sugar

produced by the petitioner were placed under the control of the District Magistrate and the petitioner was unable to export the same.

3. The petitioner, accordingly, claims that it is entitled to extension of time for completing the export obligations and the denial of the same is arbitrary and unreasonable.

4. Briefly stated, the relevant facts necessary to address the controversy are that the petitioner obtained an Advance Authorization - Advance Authorisation No. 0510336650 dated 08.10.2012 - from the Regional Office of DGFT for import of 30,000 MT of raw sugar (corresponding to a polarimeter reading of less than 99.5% but not less than 98.5%) of CIF value of ₹82,94,62,500.00 with an obligation to export 28571.400 MT of white sugar of FOB value of ₹95,38,81,875.00 with the "actual user" condition. The export obligation was to be discharged within a period of eighteen months from the date of issue of the Authorization; that is, by 30.04.2014.

5. Admittedly, the petitioner failed to fulfil the export obligation within the prescribed time. After the time for performing the export obligation was over, the petitioner filed an application dated 08.05.2014 with the DGFT seeking extension of time to fulfil its export obligation. At the material time, the petitioner had exported only 7,580 MT of white sugar against its obligation to export 28,571 MT of sugar.

6. The petitioner's application was favourably considered and by way of an amendment sheet dated 21.05.2014, DGFT extended the period for performing the export obligation till 07.10.2014. The petitioner, thereafter,

filed an application dated 09.10.2014 before the PRC seeking further extension of time. The petitioner claimed that sugar manufacturers, including the petitioners, were unable to make payment to sugarcane growers from whom they had purchased sugarcane in the previous year. Consequently, the State Government (under orders of Hon'ble Allahabad High Court) had taken control of the sugar lying with manufacturers including the petitioner in order that the same may be sold to make payments to the sugarcane growers directly. The petitioner also claimed that it requested the District Magistrate, Hapur to release stock of sugar required to be exported; however, the same was not released.

7. The petitioner claims that since no action was taken by PRC with regard to its application dated 09.10.2014, the petitioner filed another application dated 23.06.2015 once again requesting for extension of time to perform its export obligation. The aforesaid application was rejected by a communication dated 22.09.2016 for the reason that the petitioner had not fulfilled 50% of the export obligation as required under paragraph 4.42(c) of the Hand Book of Procedures (HoP) 2015-20. It was further pointed out that appendix 4J of the HoP had been amended by limiting the extension of export obligation period to six months.

8. On 07.12.2015, the petitioner once again applied for extension of the export obligation period, which was denied by a communication dated 08.03.2016.

9. Mr Somnath Shukla, the learned counsel appearing for petitioner contended that the petitioner had faced a genuine difficulty in performing its

export obligation on account of the PIL filed before the Allahabad High Court pursuant to which the stock of white sugar owned by the petitioner was taken control of by the Government. He contended that the petitioner had filed an application before the District Magistrate for release of sugar for purposes of export but the same was not entertained. Next, he contended that DGFT had grossly erred in considering the petitioner's application in terms of Foreign Trade Policy (FTP) 2015-20, which was notified on 01.04.2015. He stated that the notification dated 01.05.2015 whereby, appendix 4J of the HoP 2015-20 was amended to restrict the extension of export obligation to a period to six months in case of raw sugar could not applied, retrospectively. He contended that the petitioner had a vested right to be considered under the FTP and HoP as existing prior to 01.04.2015.

10. This Court is not persuaded to accept any of the contentions advanced on behalf of the petitioner. First of all, the contention that the petitioner was disabled from performing its export obligation is not sustainable. In terms of the Advanced Authorization, the petitioner was to complete its export obligation by 30.04.2014. At the material time, there was no order passed by any Court that restricted or prevented the petitioner from completing its export obligation. The interim order by virtue of which arrangement was made for liquidation of a portion of the sugar stocks was passed by the Allahabad High Court on 13.08.2014, that is, after the initial period for completing the export obligation had lapsed.

11. On a pointed query put to Mr Shukla, whether the petitioner had moved any application before the Allahabad High Court to seek variation of the interim order to permit the petitioner to perform its export obligations,

the learned counsel had responded in the negative. It is also seen that Allahabad High Court had passed the said order as the amount payable to sugarcane growers for purchase of sugarcane had not been discharged. This Court finds it difficult to accept that the Allahabad High Court would have interdicted the petitioner from exporting its sugar as the Court was only concerned with ensuring that the sale proceeds are utilized to discharge the dues of banks and sugarcane growers. Thus, this Court is of the view that the explanation of hardship as put forth by the petitioner is a mere ruse and cannot be accepted.

12. It is also relevant to mention that the PIL in question was finally disposed of by the Allahabad High Court on 05.09.2014; that is, approximately one month prior to the expiry of the extended export obligation period, which expired on 07.10.2014. The petitioner has no reasonable explanation why it could not complete the export during this period considering that it was the petitioner’s case that it had confirmed export orders in hand.

13. In view of the above, this Court is not persuaded to accept that the petitioner was entitled to any extension of the export obligation period and this Court finds no infirmity in the decision of the respondents to reject such request.

14. In view of the above, it is not necessary to consider the petitioner's contention regarding the applicability of HoP/FTP 2015-20 to the Advance Authorisation in question. However, for the sake of completeness, it would be apposite to consider the said question as well.

15. This court is of the view that the contention that petitioner's application dated 23.06.2015 was required to be considered as per the provisions of the HoP as in force prior to 01.04.2015 is also unmerited. The petitioner has no vested right for grant of extension of the export obligation period and thus its application for extension would necessarily have to be considered as per the policy in force. Undisputedly, as per the policy applicable on 23.06.2015, an extension for purpose of discharging the export obligation in respect of import of raw sugar could not be granted beyond a period of six months. Thus, even if it is assumed that the petitioner had made out a genuine case of hardship – which this Court finds that the petitioner has not – no extension beyond a period of six months for completion of the export obligation could be granted.

16. The petitioner also did not comply with the threshold requirement of completing 50% of the exports in order to qualify for seeking extension of the export obligation period in terms of paragraph 4.42(c) of the HoP 2015-20. The contention that the said provision is inapplicable to the petitioner since the advance authorization was issued prior to HoP 2015-20 coming in force is unmerited as the matter of granting extension is the procedural matter and, as stated above, would have to be considered in terms of the policy as currently applicable and not as per the policy which was in enforce when the Advanced Authorization was granted. In any event, the question whether to grant extension of the export obligation period or not is at the discretion of the concerned authorities and paragraph 4.42 of HoP 2015-20 could very well serve as a guideline for exercise of such discretion.

17. In view of the above, the petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 28, 2017

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