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

\+ CONT.CAS(C) 818/2017 and CM APPL. 44377/2017

T T LTD ..... Petitioner

Through Ms. Shilpi Jain Sharma and Mr. Mukul Sharma, Advocates

versus

MANOJ KUMAR SINGH & ANR ..... Respondents

Through Ms. Anumita Chandra, Advocate for Mr. Sanjeev Narula, CGSC for UOI

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 06.12.2017

Instant contempt petition has come to be filed alleging violation of the order dated 31.01.2017 passed in W.P.(C) 2000/2016, the operative portion of which, reads, as under:

> **"..**
> **..**
> **8. The respondents are directed to pass a speaking order within a period of six weeks from today. The respondents, while passing the speaking order, shall also take into consideration the submission of the counsel for the petitioner, noted hereinabove, with regard to the non-applicability of the judgment of the Supreme Court in *Kanak Exports (supra)* and the effect of judgment of the High Court of Judicature at Bombay in JSW Steel Ltd. (supra).**
> **.."**

Later, on 08.11.2017, in CM No.40334/2017, moved by the petitioner in W.P.(C) 2000/2016, an order came to be passed, which reads, as under:

> **"<u>CM No.40334/2017</u>**
>
> **2. The petitioner has filed the present application, inter alia, praying for implementation of the directions issued by this Court on 31.01.2017. The learned counsel for petitioner points out that specific directions were given to respondents to pass a speaking order within six weeks from that date (i.e. 31.01.2017). The relief as sought by the petitioner cannot be granted. No directions to comply with the directions already given are required. The petitioner is at liberty to file a contempt petition for non compliance of the orders passed by this Court.**
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> **3. At this stage, learned counsel for respondents states that that the relevant file was missing and that is the reason for delay in compliance with the order passed by this Court. She further states that an order would be passed within a period of one week from today.**
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> **4. The application is disposed of."**

In pursuance of such orders, the respondents have issued communication dated 09.11.2017, which is annexed to the petition as Annexure P-13, and finds place at running page 92 of the petition, which, reads, as under:

> **"..**
> **..**
>
> **You had been granted duty credit benefit amounting to Rupees One Crore (Rs.1,00,00,000/-) and two split duty credit scrips of Rupees Fifty Lakh (Rs.5000000/-) each were issued to you by this office under Incremental Export Incentivisation Scheme on Annual Basis. The entitlement was correctly issued to you in terms of Para-3.14.5 added in the FTP vide Notification No.3 (RE-2013)/2009-14 dt. 18.04.2013 and Notification No.43 (RE-2013)/2009-2014 dt.25.09.2013.**
>
> **The matter is clarified as under:-**
>
> **That your claim pertains to "Incremental Exports Incentivisation Scheme (IEIS) on Annual Basis". Regarding IEIS on annual basis, the title of the**

Scheme itself is "Incremental Exports Incentivisation Scheme (IEIS) on Annual Basis" as per Notification No.3 dated 18.04.2013 and as per 3.14.5 (a) of the FTP 2009-14, and IEC holder would be entitled for a duty credit scrip @ 2% on the incremental growth (achieved by the IEC holder) during the current year (for example, say for the period from 01.04.2013 to 31.3.2014) compared to the previous year (for example, say for the period 01.04.2012 to 31.3.2013). Any entitlement under the scheme will be only on "annual basis" and the cut of date for the scheme for consideration of the entitlement was 31.03.2014. The DGFT had issued notification No.43 (RE-2013)/2009-2014 dt. 25.09.2013 setting out the condition that the benefit of IEIS Scheme on Annual Basis for the year 2013-14 will be limited to scrip of a value not exceeding Rs.1 Crore per IEC. The date of issue of Notification no. 43 was 25.09.2013 which was much before the cutoff date i.e. 31.03.2014 which was the date of considering the entitlement under IEIS Scheme on Annual basis.

As per Para 3.17.1(b) of the Foreign Trade Policy 2009-14, the Government reserves the right to impose / change the rate/ceiling on Duty Credit Scrip. This right had been exercised by the Government well before the cutoff date of 31.03.2014 which is the date of considering the entitlement under the IEIS Scheme on Annual Basis. Hence it should not be construed in any manner as a retrospective amendment and this in no way affects your any right since you were eligible to apply only after the completion of the financial year ending 31.03.2014.

It may be noted here that your application for grant of duty credit scrip under IEIS on Annual Basis was filed online on 13.01.2015 and hard copy of the application was submitted on 28.01.2015 as per records available in the concerned file. Hence you were very well aware of the above said Notification No.43 (RE-2013)/2009-2014 dt. 25.09.2013. Hence the granted duty credit benefit amounting to Rupees One Crore (Rs.1,00,00,000/-) were correctly issued as per prevalent policy provisions.

The notification No.27(RE-2012/2009-14 dt. 28.12.2012 and notification No.44 (RE-2013)/2009-2014 dt. 25.09.2013 challenged in your writ petition filed

> **before Hon'ble High Court of Delhi pertain to the "Incremental Exports Incentivisation Scheme (IEIS) on Quarterly Basis", whereas, in this case your application has been filed under the "Incremental Exports Incentivisation Scheme (IEIS) on Annual Basis".**
>
> **So far as the judgements passed in the cases of Kanak Exports and JSW Steel Ltd are concerned, it may be noted that the case of Kanak Exports pertains to Target Plus Scheme of FTP and hence not applicable in this case whereas case of JSW Steel Ltd. pertains to Incremental Exports Incentivisation Scheme (IEIS) on Quarterly basis and hence it does not have effect on this case, being a different scheme."**

Adverting to this communication, and the observations made by the Division Bench of this Court in W.P.(C) 6732/2015, **'T.T. Ltd. vs. Union of India & Anr.'**, ld. counsel for the petitioner strenuously contends that the decision dated 09.11.2017 is not in strict compliance of the directions given. *Prima facie*, I do not see any violation of the order dated 31.01.2017, which only records for passing of a speaking order, and, that has come to be passed. Whether the decision is right or wrong, I consider, is not required to be gone into in the present proceedings, which are actually punitive in nature. Rejected. Liberty is however, reserved to the petitioner to assail the said communication dated 09.11.2017, in accordance with law, if, so advised.

A. K. CHAWLA, J

DECEMBER 06, 2017
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