

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12996 OF 2017

M/s. Sai Raj Enterprises

..Petitioner.

V/s.

The Additional Director of Foreign Trade & Anr.

..Respondents.

Mr. Prosper D'souza with Mr. Dr.Prakash Deshmukhg for the petitioner.

Mr.Advait Sethna with Mr.Ashish Mehta, Ms.Karishma Ahuj and Ms. Hema Chhabra i/b. Mr.Ashish Mehta. for the respondents.

***CORAM: M.S.SANKLECHA AND
RIYAZ I. CHAGLA, JJ.***

DATE : OCTOBER 15, 2018

P.C.:-

At the request of the parties, the petition is being disposed of finally at the stage of admission.

2. The challenge in this petition under Article 226 of the Constitution of India is restricted, on instructions by Mr.D'souza, the learned counsel for the petitioner to the impugned order dated August 11, 2017 passed by the Additional Director General of

Foreign Trade. The impugned order August 11, 2017 dismissed the petitioner's appeal under section 15 of the Foreign Trade (Development and Regulation) Act, 1992 (Act) from the order dated April 29, 2016 passed by the Joint Director of General of Foreign Trade.

3. The petitioner's grievance is that its contention in appeal as recorded in the impugned order has not been dealt with by the impugned order passed by the Appellate Authority. In particular, our attention was drawn to the contention of the petitioner recorded in the impugned order to the effect that he never submitted any documents to obtain IEC certificate nor did he do any exports. It was submitted that the same was done by one Ajay Mishra without his knowledge and in that context the proceedings are pending before a Criminal Court. The impugned order August 11, 2017, after recording the petitioner's submission, merely states that the same is not accepted without any reasons.

4. As against this, Mr.Sethna, the learned counsel appearing for the respondents supports the impugned order dated August 11, 2017 by seeking to draw support from the order-in-

original dated April 29, 2016.

5. We find merit in the contentions raised on behalf of the petitioner that the order passed by the authority under the Act is not a speaking order. The impugned order merely rejects the submissions of the petitioner on the ground that the same is not acceptable. This indicates complete subjectivity in passing the impugned order. The authority is obliged to give reasons for its decision (the appellate order might not have elaborate reasons when it confirms the order of the original authority). Yet, the same must indicate application of mind to the submissions made by the parties and the reason why the submission is not accepted or accepted. This giving of reasons while dealing with the submissions alone injects objectivity in deciding the appeal / dispute. Moreover, this alone would let the parties know as to why its submissions are not accepted so as to effectively challenge it before the superior forum. Moreover, the superior forum would have the advantage of knowing the reasons which weighed with the authority in accepting or not accepting a particular submission. Thus reasons are the lifeblood of any adjudicating/appellate order.

6. Therefore, without having examined the merits of the dispute, we set aside the impugned order dated August 11, 2017 and restore the petitioner's appeal to the file of the Additional Director of Foreign Trade for fresh disposal in accordance with the principles of natural justice.

7 . The petition is allowed in above terms.

(RIYAZ I. CHAGLA, J.)

(M.S.SANKLECHA, J.)