

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11492 OF 2018

Tetra Pak India Pvt.Ltd.

...Petitioner

Versus

The Union of India & Ors.

...Respondents

Mr. Darius Shroff, Senior Counsel, a/w Mr. Arun Jain, i/by PDS Legal, for the Petitioner.

Mr. R.V. Govilkar, a/w Mihir R. Govilkar, i/by D.P. Singh, for the Respondents.

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

DATE : 19 October 2018

ORDER :

1. This Petition under Article 226 of the Constitution of India challenges the two orders dated 4th August 2018 passed by the Joint Director General of Foreign Trade. The impugned orders dated 4th August 2018 rejects the Petitioner's Application

for advance licence under the Foreign Trade (Development & Regulation) Act, 1992 (for short “*the Act*”) and under Foreign Trade Policy 2015-2020 (“*Policy*”). Besides the Petition also seek other relief such as a direction to grant the Petitioner's all export incentives and benefits it is entitled to under the Act and Policy.

2. However, at the hearing Shri. Shroff, the learned Senior Counsel of the Petitioner, restricts this Petition only to prayer clause (a), which seeks the setting aside of the two impugned orders dated 4th August 2018. The Petitioner is not pressing prayer clauses (b)(i) and (b)(ii) of this Petition with liberty to take such other proceedings as are available in law to it. Liberty as sought by the Petitioner is granted.

3. It is an undisputed before us that the impugned orders dated 4th August 2018 are neither preceded by a show cause notice or grant of a personal hearing. Moreover, both the impugned orders dated 4th August 2018 are identically worked and read as under:-

“With reference to your application, your kind attention is invited to Para 2.15(a) and (c) of FTP and as per these provisions, since you have been placed under Denied Entity List (DEL) by this RA in the year 2015 onwards under the provisions of Rule 7 of Foreign Trade (Regulation) Rules, 1993, your present application cannot be considered and it is hereby refused in terms of Para 2.15(c) of FTP.

The above details are provisional and subject to change.”

Thus, the impugned orders are self evidently non speaking orders.

4. In the above view, the impugned orders dated 4th August 2018 to the Petition are quashed and set aside. The Applications for grant of advance licence leading the impugned orders dated 4th August 2018 are restored to the Joint Director General of Foreign Trade-Respondent No. 3 for fresh disposal in accordance with principles of natural justice.

5. Shri. Govilkar, the learned Counsel for the Respondents, on instruction states that the show cause notice in respect of the Petitioner's two above Application for advance licence will be issued on or before 26th October 2018. Shri. Shroff, the learned Senior Counsel for the Petitioner, on instructions state that the Reply, if any, will be filed by it on or before 2nd November 2018. Thereafter, Respondent No. 3-Joint Director General of Foreign Trade will grant a personal hearing to the Petitioner and pass a speaking order as expeditiously as possible and preferably on or before 24th November 2018.

6. The Petition is disposed of in the above terms.

[RIYAZ I. CHAGLA J.]

[M.S. SANKLECHA, J.]